

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TIM F MEHLERT
Claimant

APPEAL NO. 11A-UCFE-00025-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 04/10/11
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Tim F. Mehlert filed a timely appeal from an unemployment insurance decision dated May 11, 2011, reference 01, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held June 14, 2011. Mr. Mehlert did not provide a telephone number at which he could be contacted. His former employer, US Postal Service, elected to rely upon the documents submitted for the hearing, documents that had been sent to the claimant. These documents are identified as Exhibit One in the record.

ISSUE:

Was the claimant separated from employment due to misconduct?

FINDINGS OF FACT:

Tim F. Mehlert was a rural mail carrier for the US Postal Service. On March 31, 2011, he entered the home of a customer. The customer, a female, was asleep on the couch. Mr. Mehlert wakened her in order to obtain her signature for a piece of certified mail. Mr. Mehlert also touched the customer's stomach without permission. For this he was suspended from employment and was advised by the US Postal Service that it intended to discharge him.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant's unemployment is due to misconduct. It does.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

A suspension for misconduct is treated the same as a discharge. See 871 IAC 24.32(9). The issue is whether the action was as a result of misconduct in connection with the employment.

The evidence in this record establishes that the claimant entered the home of a customer without permission while the customer was sleeping. It establishes that the claimant awakened the customer and touched her stomach without permission. This evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated May 11, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs