

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHANNON T CHRISTENSEN
Claimant

APPEAL NO. 18A-UCFE-00024-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 04/29/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

U.S. Postal Service (employer) appealed a representative's June 7, 2018, decision (reference 01) that concluded Shannon Christensen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 29, 2018. The claimant participated personally. The employer participated by Keith Dickinson, Labor Relations Specialist. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 5, 2014, as a full-time mail processing clerk. The claimant signed for receipt of the employer's labor relations manual when he was hired. He knew he should be at work on time but saw that some workers were allowed to make up the few minutes they were tardy at the end of their shifts. His supervisor did not allow him to make up time.

On December 9, 2017, the claimant was issued a Notice of Removal for attendance violations but continued to work. On December 26, 2017, the employer issued the claimant a Removal Reduced to Extend 14-day Suspension. If the claimant maintained "acceptable attendance" through December 31, 2018, his fourteen-day suspension would be expunged from all postal files. An example of acceptable attendance was no more than three unscheduled occurrences in a rolling ninety-day period. The parties to the document agreed that "No absences/occurrences prior to January 1, 2018, shall be used for subsequent discipline".

The claimant was absent on January 5, 2018, because his basement flooded. He properly reported his absence. On January 13, 16, 21, and 26, 2018, the claimant was five to seven

minutes tardy for work because he did not allow himself enough time to get to work. On January 30, 2018, the claimant properly reported his absence due to a medical issue. On February 9 and 16, 2018, the claimant was six to seven minutes tardy for work because he did not allow himself enough time to get to work. The claimant was not absent from work after February 16, 2018.

The employer did not refer the claimant for termination after three unscheduled occurrences in January 2018. After his tardiness on February 16, 2018, the employer began the process to terminate the claimant. On March 9, 2018, the employer prepared a Notice of Proposed Removal. It presented it to the claimant on March 13, 2018. The notice indicated the claimant would be removed “no sooner than thirty days following the receipt of the notice”. On April 19, 2018, the employer walked the claimant off the job.

The claimant filed for unemployment insurance benefits with an effective date of April 29, 2018. The employer provided the name and number of Karla Nalls as the person who would participate in the fact-finding interview on June 1, 2018. The fact finder called Ms. Nalls but she was not available. The fact finder left a voice message with the fact finder’s name, number, and the employer’s appeal rights. The employer did not respond to the message. The fact finder relied on documents provided in the employer’s notice of claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on February 16, 2018. The claimant was not asked to leave until April 19, 2018. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's June 7, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs