

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DOUGLAS J BUTTIKOFER**  
Claimant

**UNITED PARCEL SERVICE**  
Employer

**APPEAL 19A-UI-08807-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/06/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(11) – Incarceration  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Employer filed an appeal from the October 28, 2019 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 4, 2019, at 2:00 p.m. Claimant participated. Employer participated through Gregory Wroblewski, Business Manager, and Amy VenHorst, Security Investigator. Employer's Exhibits 1 – 3 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.  
Whether claimant's separation is disqualifying due to incarceration.  
Whether claimant is overpaid benefits.  
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time package car driver from March 17, 1999 until his employment with United Parcel Service ended on October 7, 2019. (Wroblewski Testimony) On October 1, 2019, claimant was arrested for and charged with three counts of a class four felony based upon telephone calls claimant made while at work. (VenHorst Testimony) Employer suspended claimant on October 2, 2019 pending an investigation. (Wroblewski Testimony) Employer investigated the matter by interviewing claimant and police officers who investigated the criminal charges. (Wroblewski Testimony) The police provided employer with a summary of two telephone calls that they allege are unlawful acts by claimant while claimant was at work. (Wroblewski Testimony; Exhibit 3) During a meeting with employer, claimant disputed the pending criminal charges. (Claimant Testimony)

On October 7, 2019, employer discharged claimant because of his pending criminal charges and because the charges stemmed from claimant's actions while working. (Wroblewski Testimony) At the time of separation, claimant had not entered a plea to the criminal charges and had not been convicted of the crimes charged. (Claimant Testimony) Employer has a policy that prohibits employees from using a telephone while driving. (Wroblewski Testimony) Claimant had no prior warnings for using a telephone while driving. (Wroblewski Testimony) Claimant was performing his job duties during the telephone calls that resulted in criminal charges. (Claimant Testimony)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Disqualifying conduct cannot be predicated on a mere arrest unsupported by a conviction or other credible evidence of the claimant's intentional conduct. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016) (citing *In re Benjamin*, 572 N.Y.S.2d 970, 972 (App. Div. 1991)(per curiam)).

Employer did not discharge claimant for violation of a company policy for using his telephone while driving or for time theft. Employer discharged claimant because claimant was charged with a crime that he allegedly committed while at work. Claimant disputed the charges and has not pled guilty to or been convicted of the charges. Claimant is entitled to the presumption of innocence. While the charges may warrant discharge in employer's opinion, they are insufficient to establish misconduct within the meaning of the law. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The October 28, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/scn