

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARREN J JOHNSTON**  
Claimant

**APPEAL NO. 09A-UCFE-00017-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES POSTAL SERVICE**  
Employer

**Original Claim: 07/05/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Suspension or Disciplinary Layoff

**STATEMENT OF THE CASE:**

Darren J. Johnston (claimant) appealed a representative's August 14, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with the United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged or suspended for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 6, 2000. He worked full-time as a letter carrier. His last day of work was June 18, 2009. The employer suspended him on June 19 and on July 31, 2009 recommended that he be removed. The reason asserted for the discharge was failure to properly dispatch mail and failure to cooperate with an investigation.

After the claimant left work on June 17, someone found a drug pipe and lighter in a mail tub with undispached mail which was allegedly in the claimant's work area. On June 18 the claimant was summoned for an interview and was asked if the pipe and lighter were his. The claimant responded that he could not definitively say they were not his. He felt this was the most honest response because at one point he had used drugs and knew he had a drug pipe at home; he occasionally took mail tubs home to carry personal items, and felt he could not be certain that it was impossible that the pipe could not have gotten into the mail tub by falling out of his kitchen cabinet. When the investigators began to press him further for answers and indicated that criminal charges were possible, the claimant indicated he did not wish to speak to them further

until he had a chance to seek representation. However, because of his responses and lack of responses, the employer then suspended him pending further investigation.

The claimant obtained counsel and then cooperated in a full interview on June 23. He volunteered his fingerprints, which he learned came back as a negative to the prints on the pipe. He was shown a picture of the lighter, which did not appear like any of his lighters. He was not shown a picture of the pipe. However, on August 18 the claimant found his pipe at home and destroyed it.

The claimant denied that he had failed to dispatch mail. It was not established that the mail tub with the undispached mail was in fact left at the claimant's work area by the claimant, as compared to it being left there by someone else after he left. The claimant had not previously received any prior disciplinary actions.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a. For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

In order to establish misconduct such as to disqualify an employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest, as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging or suspending the claimant is his failure to properly dispatch mail and failure to more fully participate in the initial interview without seeking representation. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's August 14, 2009 decision (reference 01) is reversed. The employer discharged or suspended the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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