

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RAYMOND A PUDANS
1113 MARSHALL ST
DE SOTO IA 50069-1021**

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318**

**Appeal Number: 06A-UCFE-00020-HT
OC: 05/07/06 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, United States Postal Service (USPS), filed an appeal from a decision dated June 9, 2006, reference 01. The decision allowed benefits to the claimant, Raymond Pudans. After due notice was issued, a hearing was held by telephone conference call on July 11, 2006. The claimant participated on his own behalf. The employer participated by Manager of Distribution Operations Lourene Bennett and Supervisor of Distribution Operations Ted Roberts. Exhibits One and Two were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Raymond Pudans was employed by USPS from August 7, 1993 until April 24, 2006. He was a full-time dock clerk.

Mr. Pudans was a member of the Iowa National Guard. He submitted a request for leave for August 12, 13 and 14, 2005, after receiving orders to report. The request was granted and he reported for duty on August 12, 2005. At that time he made the decision to resign effective August 13, 2005, because of various problems he was experiencing within the Guard. He served on August 12, submitted the written resignation and some of his equipment on August 13, and the remainder of his effects on August 14, 2005. He also had to interview with at least two superior officers and said goodbye to the men in his squad.

On February 6, 2006, FMLA Coordinator Paula Gilliland notified Inspector General Special Agent Paul Reiser of a report from Sgt. David Boone that the claimant had not been on duty August 13 and 14, 2005. An investigation was initiated and a final report submitted on March 29, 2006, finding the claimant had not reported for military duty during the entire three days requested and did not report for his regular duties at USPS.

During the investigation the claimant was never notified that his job might be in jeopardy if the results showed any wrong-doing on his part. He was also not provided with a copy of the report when it was finalized.

Supervisor of Distribution Operations Ted Roberts, and several others, received the report. No decision was made regarding separation for over three weeks while a review was done of the report and Mr. Pudans's attendance record. The claimant had received several written warnings and suspensions for absenteeism. At least one disciplinary action has been rescinded because he was on intermittent FMLA during the majority of the days that were counted against him.

The claimant was "escorted from the premises" on April 24, 2006. He remains in pay status while a final determination on the separation is being made.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of his unemployment benefits.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's position is that the claimant was discharged for fraudulently requesting leave time for military duty he did not attend. However, the claimant presented evidence he did attend the military duty and, due to his resignation, was not paid for the second two days, although he had to remain to return equipment, interview with his officers and say goodbye to the men in his squad. The administrative law judge believes that this is still in keeping with leave for military duty, even though Mr. Pudans was not paid for the second two days. There was no fraud involved as he did not decide to resign until he actually reported for duty on August 12, 2005.

The judge also notes an excessive amount of time passed between the date the investigation report was submitted and the claimant was escorted from the premises. Mr. Roberts indicated a review of the attendance record was necessary and that he was "busy" with other duties. 871 IAC 24.32(8) does require a current, final act of misconduct to precipitate the discharge. The employer has sufficient information as of March 29, 2006 to make the decision to discharge and no satisfactory reason for a delay in excess of three weeks has been provided.

The employer has failed to establish misconduct sufficient to warrant a denial of unemployment benefits and disqualification may not be imposed.

DECISION:

The representative's decision of June 9, 2006, reference 01, is affirmed. Raymond Pudans is qualified for benefits, provided he is otherwise eligible.

bgh/cs