

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORELIE D PORTER
Claimant

APPEAL NO. 07A-UI-07234-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

**OC: 07/01/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lorelie Porter filed an appeal from a representative's decision dated July 25, 2007, reference 01, which denied benefits based on her separation from Federal Express Corporation (FedEx). After due notice was issued, a hearing was held by telephone on August 13, 2007. Ms. Porter participated personally. The employer participated by Marlene Simmons, Manager, and was represented by Manija Basherey of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Porter was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Porter began working for FedEx in 1996 and last worked on February 14, 2007. At the time of separation, she was working from 20 to 25 hours each week as a customer service agent. The employer has a written work rule, of which Ms. Porter was aware, that requires employees to report an arrest or indictment the next scheduled workday after such arrest or indictment. The rule refers to both felonies and misdemeanors.

Ms. Porter was arrested and charged with drug possession on November 27, 2006. The employer did not learn of the arrest until February 15, 2007 when she was arrested for failing to abide by the terms of her release. Because of a "dirty" urinalysis, Ms. Porter was arrested on February 15 and confined to jail until June 15, 2007. The failure to report her November arrest was the sole reason for Ms. Porter's discharge from FedEx.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). Ms. Porter was discharged for violation of a known work rule that required her to report her arrest to the employer. In spite of having received a copy of the policy, Ms. Porter failed to report her arrest in November of 2006.

Ms. Porter's conduct was clearly contrary to the type of behavior she knew the employer expected of her. It appears that the only reason the employer became aware of the November arrest was the fact that she was arrested on a somewhat related charge in February of 2007. This was not a case of Ms. Porter simply reporting the arrest several days after she was required to. Given the lapse of time between November and February, it appears she had no intention of notifying the employer of the November arrest. For the reasons cited herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated July 25, 2007, reference 01, is hereby affirmed. Ms. Porter was discharged by FedEx for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css