

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY W BRENNAN
Claimant

APPEAL NO: 13A-UCFE-00002-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 11/25/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Suspension

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 9, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been suspended for disqualifying reasons. The claimant participated in the hearing with his attorney, T.J. Hier. Kyle Helm, a labor relations specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer suspend the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. He works as a full-time rural letter carrier. Prior to November 20, 2012, the claimant's job was not in jeopardy.

On November 20, the employer learned the claimant had been arrested and charged with burglary and theft – stealing soybeans worth \$10,000.00. The employer understood the theft of soybeans occurred five times. After a surveillance camera had been set up, the claimant was arrested and charged with various counts of burglary and theft. After the claimant posted a bond, he was released from jail.

The National Rural Mail Carriers Contract under Article 16 indicates a rural mail carrier can be suspended or discharged when the employer reasonably believes he is guilty of a crime where the sentence is imprisonment. Based on federal rules of conduct, the employer concluded the claimant's suspension was justified even though the criminal charges have not been resolved because anytime there is an allegation of a crime, an employee can be suspended or discharged.

On November 21, the employer suspended the claimant without pay. The claimant's suspension remains until the criminal charges against him have been resolved. As of the date of the hearing, the criminal charges against the claimant have not been resolved. His pre-trial conference is scheduled for early March.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges or suspends him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The only reason the employer suspended the claimant was because he has been charged with burglary and theft of soybeans worth \$10,000.00. While the criminal charges may be embarrassing for the employer, being charged with various counts of burglary and theft does not make the claimant guilty of these charges. As of the date of the hearing, the criminal charges against the claimant had not been resolved. The employer may have justifiable business reasons for suspending the claimant without pay, but the evidence does not establish that the claimant is guilty of the criminal offenses that he has been charged with. Based on the evidence presented during the hearing, the employer did not establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive benefits as of November 25, 2012.

DECISION:

The representative's January 9, 2013 determination (reference 01) is reversed. The employer established business reasons for suspending the claimant without pay, but the evidence does not establish that the claimant committed work-connected misconduct. As of November 25, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs