

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROYBERT L ROSE
Claimant

APPEAL NO. 07A-UCFE-00026-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 07/22/07 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

US Postal Service filed an appeal from a representative's decision dated August 15, 2007, reference 01, which held that no disqualification would be imposed regarding Roybert Rose's separation from employment. After due notice was issued, a hearing was held by telephone on September 10, 2007. Mr. Rose participated personally. The employer participated by Angie Pettinger, Labor Relations Specialist, and James McConkey, Postmaster. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Rose 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: Mr. Rose began working for the US Postal Service on November 18, 1989. His last day of work was July 16, 2007, at which point he was working full time as a letter carrier. He was discharged for violating the terms of a "last chance" agreement.

On July 24, 2006, Mr. Rose was notified of his proposed removal from service effective 30 days from his receipt of the notice. The proposed action was based on the fact that he engaged in a physical altercation with a customer on June 28, 2006. The customer objected to the location where Mr. Rose parked the postal vehicle. The customer's address was not one where Mr. Rose made deliveries. He went onto the customer's porch to argue about the parking location. As the customer came out of his doorway, Mr. Rose pushed him and the customer fell backwards. Rather than remove him as proposed, the employer entered into a "last chance" agreement on September 28, 2006. The agreement was to be in effect for two years and provided for discharge if Mr. Rose violated any postal service standards.

Mr. Rose received a verbal warning on November 14, 2006 for not wearing his seatbelt as required by postal regulations. He received another verbal warning on December 5 for driving

without his headlights on and not using his turn signals on two occasions. Mr. Rose received a verbal warning on April 10, 2007 for not carrying his satchel or dog spray as required. He did not use the satchel because he had only a small amount of mail and did not have the spray because he knew there were no dogs in the area. He received a verbal warning on April 24 because he failed to return a master key at the end of his shift. His verbal warning of July 13 was due to the fact that he drove over the sidewalk in violation of postal standards. He did not know that the drop had been changed to one that required him to exit his vehicle.

The decision to remove Mr. Rose from service was prompted by the fact that he failed to come to a complete stop at an intersection on July 16, 2007. He slowed, looked for oncoming traffic and proceeded to make a right turn. He was suspended from work on July 16. On September 6, 2007, he was given the required 30-day's notice of his proposed removal from service.

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). Mr. Rose was discharged because he violated several postal regulations while on a "last chance" agreement. The infractions after September 28, 2006 were relatively minor and none of them resulted in formal disciplinary action at the time. He did not put his seat belt on immediately on one occasion and failed to turn on his headlights on another occasion. He did not use his satchel on an occasion when he only had a small amount of mail. He also did not have dog spray on this occasion. However, he was familiar with his route and knew there were no dogs for which he might need the spray. He failed to use his turn signal on occasion and inadvertently took a master key home on one occasion. Although Mr. Rose did not come to a complete stop on July 16, he did slow and check for oncoming traffic before making his turn.

The administrative law judge appreciates that the infractions cited above were technically violations of the employer's standards. However, the actions did not evince a willful or wanton disregard of the employer's standards and interests. The violations represented isolated lapses in good performance. Although Mr. Rose's conduct in pushing a customer on June 28, 2006 was an act of misconduct, the employer chose to allow him to remain in the employment in spite of the conduct. He did not commit any acts of intentional misconduct after receiving the "last chance" agreement.

The administrative law judge concludes that Mr. Rose's discharge was not predicated on substantial misconduct as is required for a disqualification from benefits. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer may have had good cause to discharge him, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated August 15, 2007, reference 01, is hereby affirmed. Mr. Rose was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw