

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK PETERSON
Claimant

APPEAL NO. 11A-UI-11628-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 07-31-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 28, 2011. The claimant participated in the hearing. Eric Griffin, business manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time package driver for United Parcel Service from March 17, 1989 to August 5, 2011. On July 29, 2011, the employer received a customer complaint about the claimant regarding a delivery he made earlier that day. The customer indicated the claimant asked for help unloading approximately 47 packages but they did not have anyone who could help him at that time, because he was delivering earlier than usual due to the way his truck was loaded and, consequently, the claimant threw the boxes into the receiving area rather than stacking them with assistance from the customer's receiving employees as was his usual practice. The claimant testified his truck was loaded incorrectly; so, instead of being able to back in and unload in his usual manner, he had to move the customer's packages from behind the driver's seat, stack them on the passenger side of the truck, get out and go in front of the truck, which he nosed into the receiving area, and retrieve the boxes. He then tossed them into the receiving area because when he originally asked for help unloading the unusually large shipment for that customer, he was told to slide them into the receiving area and the customer would take care of them because its receiving employees had not started work yet. Most of the packages contained latex gloves and were tossed in a semi-circle about 25 feet wide. The employer expects drivers to neatly stack packages for customers. Usually, the claimant would back up to the garage, scan the packages, and place them on a pallet or lay them on the floor next to the garage door. After reviewing the customer's video surveillance of the claimant's actions and reading written statements from the customer's employees, the employer

determined the claimant's behavior showed a lack of professional conduct and that he did not handle the customer's packages with integrity. Consequently, the employer terminated the claimant's employment August 5, 2011. The claimant had not received any written warnings in the last two years but had been talked to about customer complaints during that time frame.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant may have acted inappropriately in tossing the packages into the receiving area, this was at worst an isolated incident of misconduct. The claimant's truck was loaded improperly, which caused him to have to deliver at a different time and in a different manner to the customer. Because he arrived at the customer's facility early, there was no one from the customer's receiving

department to help the claimant or check the packages in and he was directed to slide them into the garage and that the customer would then take care of them. Although the claimant should have stacked the packages in a professional manner, the fact that he did not do so does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 25, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw