

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ISAAC A BLAZEK**  
Claimant

**APPEAL NO. 15A-UI-02356-JTT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 01/25/15  
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Isaac Blazek filed an appeal from the February 18, 2015, reference 01, unemployment insurance decision that disqualified him for unemployment insurance benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged on December 22, 2014 for misconduct in connection with the employment. After due notice was issued, a hearing was held on March 24, 2015. Mr. Blazek participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUE:**

Whether the claimant was suspended or discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Isaac Blazek commenced his full-time employment with the United States Postal Service in January 2013. Mr. Blazek worked as a full-time City Carrier Assistant. Mr. Blazek was responsible for delivering mail to in a Postal Service vehicle. Prior to returning to the employment during the week that began March 15, 2015, Mr. Blazek had last performed work for the employer on December 22, 2014. At that point, the employer suspended Mr. Blazek from the employment without pay. In November 2014, Mr. Blazek had been arrested and charged with Operating While Intoxicated. On February 10, 2015, the employer notified Mr. Blazek that he was discharged from the employment due to an OWI related license revocation. Mr. Blazek's mail delivery duties required that he maintain a valid driver's license.

Mr. Blazek established a claim for unemployment insurance benefits that was effective January 25, 2015.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The claimant testified in a manner that was less than candid. The employer did not provide a telephone number for the hearing or participate in the hearing. The employer did not present any evidence to meet its burden of establishing that the claimant's suspension or discharge was for misconduct in connection with the employment that would disqualify him for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged, effective December 22, 2014, for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The February 18, 2015, reference 01, decision is reversed. The claimant was discharged, effective December 22, 2014, for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs/pjs