

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY D SCHRAMM
Claimant

APPEAL NO. 08A UCFE-00005-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 02/24/08 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, US Postal Service, filed an appeal from a decision dated March 14, 2008, reference 01. The decision allowed benefits to the claimant, Beverly Schramm. After due notice was issued, a hearing was held by telephone conference call on April 8, 2008 and concluded on April 22, 2008. The claimant participated on her own behalf. The employer participated by Customer Service Supervisor Leo Wiriadjaja and was represented by Labor Relations Specialist Douglas Lambert. Exhibits One, Two, Three, Four, A, B, and C were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Beverly Schramm was employed by U.S. Postal Service from July 24, 2004 until February 27, 2008, as a full-time letter carrier. She does both a motor route and a walking route. She had received prior discipline for leaving the door of her delivery vehicle open when it was not in her "line of sight." In January 2007, she had been given a 14-day suspension for "unacceptable conduct" when she allegedly threw a pen during a meeting. The next step after a 14-day suspension is discharge.

On February 26, 2008, the claimant contacted the employer and said she had done the motor portion of her route but it was unsafe to do the walking portion because of the all ice and snow on the sidewalks. She was told to wait for Supervisor Leo Wiriadjaja to assess the situation and he declared it was safe after inspecting some of the route from car to house, three sidewalks, and two driveways. He had brought "yak traks," devices to fit onto boots to give more traction, but the claimant refused to wear them. When the supervisor insisted, she said she wanted the instructions in writing because it conflicted with instructions given to her by another supervisor earlier in the day who had told her to do the motor portion of her route first then contact the office before doing the walking portion. Mr. Wiriadjaja said he would not put it in writing but she

should finish her route. When she still refused to do the remainder of her route, she was told to go back to the post office, punch out, and come back the next day.

After she was off the clock, the claimant was driving around in her personal vehicle taking pictures of the carriers who were finishing her route and Mr. Wiriadjaja. She made remarks to some of them asking if they were having fun finishing her route. None of the other carriers finishing her route found the conditions unsafe and no one was injured or had accidents. At least one other carrier felt intimidated by her conduct and reported it to Mr. Wiriadjaja

An investigation was started the next day and she was placed on emergency off duty status without pay. On March 7, 2008, she was placed on paid leave when the investigation concluded. It was determined by an initial investigation there were no threats of physical violence and no attempt to run over anyone with her vehicle as had been alleged. However, it did state her conduct amounted to harassment and intimidation.

On March 27, 2008, she was given a letter of removal that notified her she was being discharged and had 14 days to grieve the removal, which she has done. However, the process has not yet reached a resolution.

Beverly Schramm has received unemployment benefits since filing a claim with an effective date of February 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was removed from her duties as a carrier for tactics the employer considers to constitute intimidating and harassing, as well as insubordination. She did not deny refusing to finish her route, insisting it was not safe, but the supervisor declared it to be safe and provided her with additional safety equipment. The carriers who had to finish her route found it safe and no accidents occurred, which is evidence the claimant's assessment was not correct.

She insisted she finished the majority of her route, but the exhibit she submitted to prove that did not convince the administrative law judge, as the printout was for another date than February 26, 2008, and the claimant did not have her own copy and could not point to the necessary parts of that document to support her case. In any event, the issue is not how much of her route she finished but her refusal to conclude it and her activities after that.

Ms. Schramm drove around the route she had refused to finish, taking pictures of the substitute carriers and the supervisors, for reasons which were never entirely clear in the record. She insisted it was to "make her own pictures" of the area to counter any pictures taken by the employer and to take pictures of the number of carriers brought in to finish her route and to prove the supervisor was on site on her route. Whatever her reasons, the judge concludes it does constitute intimidation and harassment of the other carriers.

The claimant insisted she was in her own vehicle on her own time and could drive around and take pictures of anyone she wanted. However, the employer's policy does state postal carriers are to conduct themselves during and outside of working hours "in a manner which reflects favorably upon the Postal Service."

The claimant was removed from her job for conduct not in the best interests of the employer. It was not an isolated incident but at least the second occurrence of "acting out" toward co-workers. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 14, 2008, reference 01, is reversed. Beverly Schramm is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$694.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw