

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHASE DAVID
Claimant

APPEAL NO: 13A-UI-13764-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 11/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 4, 2013, 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 January 9, 2014. The claimant participated in the hearing. Mike Allison, Supervisor, 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 hub supervisor for United Parcel Service from October 31, 2010 to September 30, 2013. He was discharged by Supervisor Sean Counihan who was dissatisfied with the claimant's training ability.

On September 30, 2013, Supervisor Mike Allison held a brief meeting with the claimant to discuss the claimant's training methods because a new trainee did not have the knowledge Mr. Allison expected he would have had after a few hours on his first day. Mr. Allison told the claimant his expectations which included remaining "hip to hip" with the new hire. The conversation lasted approximately two minutes and the claimant appeared receptive to the directions given by Mr. Allison.

Approximately 20 minutes later, Supervisor Sean Counihan told the claimant he was not doing his job correctly. He stated he had told the claimant the same thing in the past and he was not doing the job how Mr. Counihan expected him to do it. Mr. Counihan had called the claimant to his office four days earlier and "yelled" at him for not doing his job and stated if it happened again he would lose his job. Mr. Counihan then told him to leave and not come back so the claimant believed his employment was terminated and left the building.

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 employer talked to the claimant about issues regarding the claimant's training methods, with the last time prior to the termination occurring approximately 30 minutes before Mr. Counihan terminated his employment, the employer did not present any evidence of prior documented warnings about the claimant failing to perform his job to the employer's standards on a consistent basis or that he had received a written warning stating he would be discharged if his performance did not improve. Mr. Counihan was not present at the hearing to offer rebuttal

testimony to that of the claimant and consequently the claimant's first hand testimony must be given more weight than that of Mr. Allison. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The December 4, 2013, 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/pjs