

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELSI J WORLEY
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL 21A-UI-11915-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding
PL 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On April 16, 2021, the employer, Federal Express Corporation, filed an appeal from the April 6, 2020 (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, July 19, 2021. The claimant, Kelsi Worley, participated. The employer, Federal Express Corporation, participated through witness Brandon Johnson, Manager; and hearing representative Toni McColl represented the employer. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment due to disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a courier, from August 23, 2017, until February 15, 2021, when she was discharged for falsification of a company document.

The final incident leading to claimant's discharge occurred on February 5, 2021. That day, claimant was driving her route and accidentally went to the wrong door for a customer to look for packages to pick up in the afternoon. Claimant explained that this customer has her use the back entrance in the morning and the front entrance in the afternoon. On February 5, claimant got mixed up and went to the back entrance in the afternoon. When she saw there were no packages at the back entrance, she recorded in the employer's electronic system that the customer had no packages for pick up, and she continued on her route. Claimant was less than one month into a new delivery route, and she simply became confused. Later that day or the next day, the customer complained to the employer, as it had packages waiting at its front

entrance on February 5 that claimant did not retrieve. The employer suspended claimant on February 11 and discharged her four days later.

Claimant had been warned on one prior occasion for falsification of company documentation. On January 8, 2021, claimant scanned a number of customer packages and noted that they could not be delivered because the business delivery locations were closed. In fact, claimant never attempted delivery of these packages. During a conversation with the employer about the incident, claimant explained that she was running behind, got flustered, and made a bad choice. Claimant had just started her new delivery route at that time. The employer warned claimant that her job would be in jeopardy if this ever happened again. Claimant denies anything like this ever happened again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides, in relevant part:

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.

...

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the credibility issues in this case have been resolved. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant gave reliable, firsthand testimony regarding the events of February 5, 2021.


In this case, the credible evidence in the record indicates claimant's actions on February 5 amount to a mistake. Claimant, whether because she was driving a new route, because she was rushing, or because she was human and humans make mistakes, made a simple error and went to the incorrect door of a customer to check for packages. There is no evidence that this was motivated by ill intent or that claimant deliberately went to the wrong door. Additionally, there is no evidence that claimant intentionally falsified any company documentation during the events of February 5, 2021. The employer has not met its burden of establishing disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The April 6, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

The issues of overpayment, repayment, and chargeability are moot.



Elizabeth A. Johnson
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July 27, 2021
Decision Dated and Mailed

lj/mh