

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE K NICHOLS**  
Claimant

**APPEAL NO. 09A-UCFE-00011-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 04/19/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

US Postal Service (employer) appealed a representative's May 27, 2009 decision (reference 01) that concluded Charlene Nichols (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 25, 2009. The claimant participated personally. The employer participated by Kim Morse, Supervisor, and Angie Pettinger, Labor Relations Specialist.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 1994, and at the end of her employment she was working as a full-time rural mail carrier.

The claimant sold stamps to customers along her route. She did not understand she had to take the checks the customers wrote to a specific location. The employer informed her of her mistake on December 2, 2008, and the claimant did not make the mistake again.

On December 3, 2008, the claimant slid her vehicle into a ditch while trying to deliver mail. The claimant was towed out of the ditch and returned the undelivered mail to the employer. The claimant was shaken by the experience. The employer told the claimant to get back into her vehicle and deliver the mail. The claimant felt it was unsafe and she was too upset. She refused the employer's order.

The claimant was worried about not getting the mail delivered. She called her substitute and asked him to help her perform her job duties on December 4, 2008. The claimant was still upset and not thinking properly due to her experience the day before. The claimant performed her job duties by delivering mail on a icy surfaces at a slow pace. The substitute delivered a portion of the claimant's route. The claimant was concerned about performing her work and did not

consider that the employer had to pay both the claimant and the substitute to perform one day of the claimant's job duties.

On December 19, 2008, the employer discovered what the claimant did on December 4, 2008. On January 12, 2009, the employer suspended the claimant. On January 30, 2009, the employer terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not

only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer provided a final incident that it discovered on December 19, 2008, but did not act upon until January 12, 2009. The incident and the action by the employer are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's May 27, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs