

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY A BENNETT
Claimant

APPEAL NO. 17A-UI-08024-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDEX GROUND PACKAGE SYSTEM INC
Employer

OC: 07/09/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Fedex Ground Package System (employer) appealed a representative's July 31, 2017, decision (reference 01) that concluded Randy Bennett (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 25, 2017. The claimant participated personally and through Staci Meeker, former co-worker. The employer participated by Jennifer Kleese, Human Resources Senior Business Partner; Matt Brandt, Senior Manager; and Brian Schmitz, Operations Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 November 4, 2014, as a part-time package handler. The claimant signed for receipt of the employer's handbook on November 4, 2014. Employees are not supposed to throw packages but someone does it every day to try to speed the pace of their job.

On October 1, 2016, the claimant signed for the employer's Workplace Violence Prevention Program. The policy states, "Workplace violence encompasses more than physical harm to an individual. It also includes gestures and expressions that communicate a direct or indirect threat of harm, oral and written statements, sexual aggression, intimidation, bullying or other aggressive behavior."

The employer issued the claimant written warnings on June 4, 2015, and May 10, 2016, for failure to follow procedures regarding throwing packages. The employer notified the claimant both times that further infractions could result in termination from employment. On September 8, 2016, and April 5, 2017, the employer issued the claimant "discussions" that did not list any consequences for the claimant's behaviors.

On June 1, 2017, the employer placed the claimant on a paid suspension pending investigation due to the allegations of an unknown coworker. A co-worker told the employer the claimant made racist and bullying comments. During the investigation workers said the claimant threw some packages on or about April 7, 2017, used the word "retard" on an unknown date, was rude on an unknown date, and was inconsiderate on an unknown date. The claimant was questioned about what the unknown co-workers said about him. He denied using the word "retard" or creating a hostile work environment. The claimant said he did yell over the radio to be heard. The employer decided to terminate the claimant for creating a hostile work environment. On June 29, 2017, the employer telephoned the claimant and terminated him without telling him the reason.

The claimant filed for unemployment insurance benefits with an effective date of July 9, 2017. The employer participated personally at the fact finding interview on July 25, 2017, by Matt Brandt.

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, 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(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).

Iowa Admin. Code r.871-24.32(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 was not able to provide any evidence of a final incident of misconduct. 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 July 31, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs