

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CHARLES F SCHANY

Claimant

and

UNITED PARCEL SERVICE

Employer

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HEARING NUMBER: 15B-UI-01944

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Charles F. Schany, worked for United Parcel Service from May 9, 1988 through January 2, 2015 as a full-time package deliverer. (7:21-7:52; 16:35-16:57) The Employer has a policy that provides an employee shall be immediately terminated for an act of dishonesty that impugns the integrity of the company. (30:21-31:09; Exhibit 6) It also has a policy that prohibits shipping packages for free using the UPS labels. (25:03-25:12)

On January 2, 2015, the Employer discovered a package was returned, which had previously gone out to the Claimant's mother in Wisconsin. (8:34-10:06; Exhibit 1) The Employer questioned the Claimant about the package and if he tampered with the label in any way to which the Claimant explained how he mailed the package in a manner, which indicated that he kept the package out of normal mailing procedures. (24:07-24:39; 40:35-40:58) He explained that he crossed out the UPS label and added his mother's mailing

address to it. (25:25-26:18) When asked if he'd mailed personal packages using the UPS labels before, he responded that he'd done so before because he thought it was okay, particularly since he used a different 'authorized return shipping' (ARS) label, i.e., Amazon return label in this instance. (24:42-24:59; 26:31-27:15; *4:36-4:45; *20:25-20:32; *23:01-23:07; 23:53) The Employer keeps UPS ARS labels for the sole purpose of returning UPS uniforms back and forth to the shipper. (*40:50-41:06; *41:02-41:25; 41:32)

The Employer subsequently learned that the Claimant lied (32:20-33:00), i.e., an Amazon label had *not* been used. (*14:18-14:53) The Claimant would have had to physically pull a UPS return label out of a package and affix it onto his package. The Employer terminated the Claimant for dishonesty and violation of the company's integrity policy for 'misusing' a UPS label for shipping a personal package free, and subsequently lying about it. (8:10-8:15; 17:40-17:49; *18:40-18:56; *28:05-28:19; Exhibit 6-unnumbered p. 3) The Claimant had been disciplined 8 years prior on a dishonesty violation for which he was suspended without pay, and reinstated after several hearings between the Employer and the Teamsters Union. (*40:02-40:40)

*[denotes 2nd recording]

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The record established that the Employer has a strict policy regarding the honesty and integrity of its employees. The Employer prides itself in the public's recognition of its 'brown uniform,' as having strictest standards that represent honesty and integrity. (*49:09) The Claimant was fully aware of these policies based on his prior experience in 2007. And while the Claimant's prior termination based on dishonesty is too remote to be considered in light of the final act that caused his current termination, the fact that he 'suffered the consequences' of this violation in the past is probative that he understood the importance of that policy and how a violation therein could put his job in jeopardy (again).

Mr. Schany's misuse of the company label for personal use was inappropriate and tantamount to theft of company property. It is immaterial that it was for only \$12.00. What matters is that he committed the act in a stealthy manner by mailing the package outside standard protocol to avoid detection. Additionally, the very type of label he used 'ARS' connotes that he had prior authorization to mail this package without any type of pickup record. It is clear from the Employer's testimony that he had no such authorization, which he, himself, essentially admitted culpability when he attempted to mitigate his act by arguing that he got distracted with a demanding customer. The fact that he, initially lied about the label further impugns the Claimant's integrity about the incident. Integrity is the Employer's most important policy, i.e., "...[the Employer] sells a service of moving packages from point A to Point B with integrity...[its employees] can go behind the counter at banks, closed airports, [etc.]...in [their] brown uniform that other regular people can't do...and they trust us..." (49:13-49:39) Mr. Schany's action placed him in an untrustworthy light and can only be characterized as a total disregard of the Employer's interests, particularly given this type of business. Based on this record, we conclude that the Employer satisfied its burden of proof.

The Claimant's argument that other employees committed allegedly more egregious infractions is irrelevant to the Claimant's case, as we do not know what factors contributed to the outcomes of those cases.

DECISION:

The administrative law judge's decision dated April 15, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, he is denied

benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

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AMG/fnv