

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HASSAN A SHEIKHELDIN**  
Claimant

**APPEAL NO. 18A-UI-04944-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USPS**  
Employer

**OC: 03/25/18**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

USPS (employer) appealed a representative's April 18, 2018, decision (reference 01) that concluded Hassan Sheikheldin (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 May 16, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Kyle Helm, Labor Relations Specialist. Exhibit D-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 June 26, 2016, as a full-time parcel post clerk. The employer has a handbook but it is too large to give to employees. When the claimant was hired, he was sent to orientation where civility in the workplace was discussed. The employer did not issue the claimant any warnings during his employment.

On March 28, 2018, the claimant heard a loud sound. A female co-worker said "fuck you", kicked the claimant in the leg, and poked him in his eye. The two yelled at each other. The claimant left the situation to report her to the supervisor. The supervisor sent the claimant home. On April 9, 2018, the employer questioned the claimant. The claimant told someone it was normal to spit when cursing and finger pointing. The employer thought the claimant meant he intentionally spit on the co-worker. As a result, the employer returned the claimant to work in preparation for his termination on May 20, 2018. In his statement at the fact finding interview on April 17, 2018, the claimant said that he may have unintentionally spit on the co-worker when yelling at her.

The claimant filed for unemployment insurance benefits with an effective date of March 25, 2018. The employer provided the name and number of Karla Nalls as the person who would

participate in the fact-finding interview on July 12, 2018. The fact finder called Ms. Nalls but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not submit the specific rule or policy that the claimant violated which caused the separation. An employee with firsthand information was not identified for rebuttal.

### **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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

On March 28, 2018, the claimant was faced with a hostile work environment. A co-worker was kicking him, poking him, and yelling at him. He responded by yelling at her and reporting her to the supervisor. Some spit may have come from his mouth when he yelled at the co-worker. This does not appear to be an intentional act. The employer did not meet its burden of proof to show intentional misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's statements is inconsistent. Ms. Helm testified to something the claimant said to an interviewer. She did not hear the statement. The claimant did not appear at the appeal hearing but gave a statement to the fact finding interviewer. The administrative law judge finds the claimant's statement to be more credible because he was an eye witnesses to the events for which he was terminated.

**DECISION:**

The representative's April 18 2018, 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs