

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS A STEWART
Claimant

APPEAL 16A-UI-05860-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDEX GROUND PACKAGE SYSTEM INC
Employer

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for theft of company property. The parties were properly notified of the hearing. A telephone hearing was held on June 13, 2016. The claimant, Dennis A. Stewart, participated. The employer, FedEx Ground Package System, Inc., participated through Mike Bruns, Senior Manager; and was represented by Barbara Toney, Hearing Consultant 2 with Talx/Equifax.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a package handler from September 11, 2007 until this employment ended on April 25, 2016, when he was discharged for theft.

Bruns testified that two knives and a necklace fell out of a package the employer received on or about April 13, 2016. These items were placed on the quality assurance table. On April 14, a customer called about a package it was supposed to receive and stated the package included two knives and a necklace. After the call, Bruns went to locate these items and they were missing. He spoke with managers who reported they had not seen the items since the day before. Bruns reviewed security camera footage and saw the items on the quality assurance table when claimant approached the table, and then the items were gone after he walked away from the table. On April 15, Bruns questioned claimant and claimant denied any knowledge of the missing items. Bruns then contacted the security department. On April 16, Bruns reviewed the security footage with claimant. Bruns testified that footage from one of the two camera views showed claimant walking up to the quality assurance table and stuffing items into his sweatshirt. After reviewing the footage, claimant admitted he took the items. Subsequently, claimant retrieved the items and returned them to Bruns. When handing over the items, claimant stated he had never done anything like that before. The employer placed claimant on investigative suspension on April 18, 2016, and it discharged him one week later.

Claimant denies taking the items off the quality assurance table. He further denies admitting to Bruns that he took them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

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.*

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 employer's testimony more credible than claimant's. While the employer did not present the surveillance video in question, the level of detail Bruns provided in his testimony regarding the video he watched as well as his interactions with claimant, when compared to claimant's recollection of the event, establish the employer's evidence as credible.

The employer presented substantial, credible evidence that claimant took property belonging to one of the employer's customers. While claimant ultimately returned the property, this does not remedy the breach of trust claimant committed. Claimant's action was in deliberate disregard of the employer's interest in preserving the trust of its customers and handling their packages with respect and care. Benefits are withheld.

DECISION:

The May 19, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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