

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MICHELE MCGUIRE  
517 SW GRAY ST  
DES MOINES IA 50315**

**US POSTAL SERVICE  
STATE COORDINATOR  
PO BOX 189994  
DES MOINES IA 50318**

**Appeal Number: 06A-UCFE-00002-BT  
OC: 10/23/05 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michele McGuire (claimant) appealed an unemployment insurance decision dated December 20, 2005, reference 01, which held that she was eligible for unemployment insurance benefits because she was discharged from the United States Postal Service (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2006. The claimant participated in the hearing. The employer participated through Tim Humpal, Postmaster.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time temporary rural carrier from April 9, 2005 through October 28, 2005. She lost an expensive scanner on her route on October 11, 2005, which was her last day of employment. The claimant testified at the hearing that she informed her supervisor of it that day, but the employer said the supervisor had no knowledge of it. The employer did not discover the scanner was missing until later that day and tried, without luck, to contact the claimant that day to ask her about it. On October 12, 2005, the claimant switched days with another employee, and although she said she had her supervisor's authorization, the employer denies that claim. The scanner was recovered on October 13, 2005 on the ground near the claimant's route. The employer took her off the schedule on that date.

The claimant reported to work on October 15, 2005, which was her next scheduled day. She saw that she had been taken off the schedule, so she called her supervisor, who reportedly indicated she was being suspended for two weeks. When the claimant next contacted the employer, she learned that she had been discharged. She had received notice of previous performance deficiencies regarding irregular reporting time, wrong deliveries, and curtailing mail without authorization. The employer discharged the claimant on October 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 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 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for failing to report her scanner was missing, changing schedules with her co-employee without authorization, and not being available by telephone. She disagrees and testified she spoke with her supervisor about the first two issues. The supervisor was not available to testify, and the employer relied on hearsay evidence that the above was true. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. Consequently, the employer has not met its burden to establish disqualifying misconduct.

However, even if it did, the final outcome would be the same since the claimant was discharged 20 days after the incident in question. 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. 871 IAC 24.32(8). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed..

#### DECISION:

The unemployment insurance decision dated December 20, 2005, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/kjw