

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK V LYONS
Claimant

APPEAL NO. 08A-UCFE-00017-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 06/01/08 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge
Section 96.6(2) – Timeliness

STATEMENT OF THE CASE:

The claimant, Jack Lyons, filed an appeal from a decision dated June 30, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 28, 2008. The claimant participated on his own behalf. The employer, United States Postal Service, participated by Labor Relations Specialist Angie Pettinger and Supervisor of Maintenance Operations Bob Lepley. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jack Lyons filed a claim for unemployment benefits with an effective date of June 1, 2008. He was disqualified in a decision dated June 30, 2008, which erroneously stated it would become final unless an appeal was filed by April 28, 2008. The claimant received the appeal on July 8, 2008, and he filed an appeal on July 12, 2008.

Mr. Lyons was employed by United States Postal Service from June 20, 1998 until June 1, 2008 as a full-time carpenter. On January 16, 2008, the claimant took \$1,000.00 in coins from the office of a vending company that was in the basement of the main post office. The office of inspector general (OIG) was informed and began its investigation January 22, 2008.

An investigator from OIG interviewed Mr. Lyons on March 5, 2008, at which time the claimant admitted to taking some bolt cutters and cutting the lock on the vending company's office door, and then cutting the hasp on a locked box where the money was kept. He was suspended by his manager for a two-week unpaid leave while the investigation continued. He was put on paid suspension March 20, 2008. Supervisor of Maintenance Operations Bob Lepley interviewed the claimant on March 28, 2008, with a union representative present and again he admitted to taking the money.

Under United States Postal Service policies, the claimant then had 30 days to request an interview with Plant Manager Jim Hermann, which he did. After that interview, Mr. Hermann sent him a letter notifying him he was being discharged and informing him of his right to file an appeal/grievance with the union.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant's appeal shall be accepted as timely, as he did not receive the decision until July 8, 2008, and filed the appeal within a reasonable amount of time afterward, and also due to the fact the date listed for the appeal in the body of the decision was incorrect.

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.

The claimant was discharged for theft. Although he did not steal from the employer directly, he broke into an office used by a company that did business with the United States Postal Service, which was on the employer's premises. While this is not theft of company money, it is destruction of company property and theft from a business housed in its building. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of June 30, 2008, reference 01, is affirmed. Jack Lyons is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw