

**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**

**NICHOLAS E BERRY
1203 HAROLD
DES MOINES IA 50315**

**UNITED PARCEL SERVICE
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-07453-DWT
OC: 05/30/04 R: 02
Claimant: Respondent (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, 4th 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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed a representative's June 29, 2004 decision (reference 03) that concluded Nicholas E. Berry (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Kevin O'Neal, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 20, 2001. He worked as a part-time employee.

On September 25, 2003, the employer reviewed the employer's workplace violence policy with the claimant after he had an altercation with another employee. On January 28, 2004, the employer again reviewed the employer's workplace violence policy with the claimant because there were more problems between the claimant and the September 25, 2003 co-worker.

The employer realized the claimant did not get along with R.G., a supervisor, but not the claimant's supervisor. On May 19, 2004, the claimant was working. The claimant had his radio on and it was on a conveyer belt. R.G. asked the claimant to turn down the volume of his radio. The claimant would not turn down the volume. R.G. then went to the claimant's radio to turn down the volume. The claimant became very upset with R.G. for touching his radio. The claimant picked up his radio and threw it to the floor. The claimant told R.G. he had no business touching his radio and he was going physically harm R.G.

The employer discharged the claimant on May 19 for again losing his temper and violating the employer's workplace violence policy. The claimant established a claim for unemployment insurance benefits during the week of May 30, 2004. The claimant filed a claim for the week ending June 12, 2004. The claimant received \$85.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant knew or should have known the employer did not allow employees to threaten other employees at work. The employer warned the claimant at least two times prior to May 19, 2004 about the employer's workplace violence policy. The employer also talked to the claimant about getting his temper under control. On May 19, 2004, the claimant not only refused to follow a reasonable direction, but his conduct and comments amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of May 30, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the week ending June 12, 2004. The claimant has been overpaid \$85.00 in benefits he received for this week.

DECISION:

The representative's June 29, 2004 decision (reference 03) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 30, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the week ending June 12, 2004. He has been overpaid and must repay the \$85.00 in benefits he received for this week.

dlw/b