

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID AUSTIN
Claimant

APPEAL NO. 07A-UCFE-00019-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 03/25/07 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

U.S. Postal Service filed an appeal from a representative's decision dated April 20, 2007, reference 01, which held that no disqualification would be imposed regarding David Austin's separation from employment. After due notice was issued, a hearing was held by telephone on May 15, 2007. Mr. Austin participated personally and was represented by Steve Chevalier, Union Steward. The employer participated by Jerry Ferris, Supervisor.

ISSUE:

At issue in this matter is whether Mr. Austin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Austin was employed by the U.S. Postal Service from November 21, 1998 until April 1, 2007. He was served with a notice on February 19, 2007 that he was being removed in 30 days due to his attendance. The final absence that triggered the separation occurred on February 4, 2007, when Mr. Austin timely reported his intent to be absent due to illness. He was over one hour late on August 16, 2006. The employer did not present evidence of other dates on which Mr. Austin was either late or absent.

Mr. Austin received warnings and suspensions regarding his attendance on September 29, and December 8, 2006. He received a written warning on June 7, 2006, because he took his time card home when he was not supposed to.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The primary reason for Mr. Austin's separation was his attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if

he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Mr. Austin's absence of February 4, 2007 is excused, as it was for reasonable cause and was properly reported. The tardiness of August 16, 2006, is not excused, as the evidence does not establish any reasonable cause for it.

Before a disqualification from benefits may be imposed, the evidence must establish that the discharge was predicated on a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the final absence that prompted Mr. Austin's discharge occurred on February 4, 2007. Inasmuch as the absence is excused, it was not an act of misconduct. The only unexcused period of absenteeism in the record is that of August 16, 2006. However, conduct occurring on that date would not constitute a current act of misconduct as required for a disqualification. The employer did not provide evidence of a current unexcused period of absenteeism.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Mr. Austin should be disqualified from receiving benefits. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated April 20, 2007, reference 01, is hereby affirmed. Mr. Austin was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw