

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARLYN J KEIZER**  
Claimant

**APPEAL NO. 11A-UCFE 00051-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 07/17/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 24, 2011, reference 02, that concluded he was suspended for work-connected misconduct. A telephone hearing was held on November 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Angie Pettinger participated in the hearing on behalf of the employer. This is duplicate decision to the one issued in 11A-UCFE-00050-SWT because two initial determinations were made regarding the same separation.

**ISSUE:**

Was the claimant suspended and discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a mail carrier for the employer from June 21, 1986, to July 9, 2011. He was informed and understood that under the employer's work rules, sexual harassment of employees was prohibited. The claimant went on vacation on July 9.

On June 26, the claimant sent text messages with offensive content to a coworker. He referred to the coworker using an old girlfriend's name in the text messages. The coworker replied he was sending the messages to her not the girlfriend.

On July 15, the claimant again sent text messages with offensive content to a coworker using an old girlfriend's name in the text messages. This time he also sent a photo that he had taken of his genitals. The coworker's husband contacted the police who advised the coworker to send a text message identifying who she was and that she was not the person named in the text. She followed the police officer advice, but still received unwanted text messages afterward. The coworker reported the unwanted text messages to the postmaster in the Le Mars post office.

On July 16, the employer informed the claimant that he was suspended and should not report to work. He was interviewed about his conduct on July 21 and said that he had misdialed when he sent the text messages to the coworker. This assertion was false as he had to have known he was dialing the coworker after he had texted her in June.

On August 5, 2011, the claimant was notified that he was being removed from his job because of the text messages and photo he had sent.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was suspended or discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged or suspended for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that he had intended to dial an old girlfriend's number and dialed the coworker by mistake.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated October 24, 2011, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css