

**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**

**JANE L CUNHA  
2769 LOGAN AVE  
WATERLOO IA 50703**

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

**Appeal Number: 05A-UCFE-00009-S2T  
OC: 12/05/04 R: 03  
Claimant: Respondent (1)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Postal Service (employer) appealed a representative's February 21, 2005 decision (reference 01) that concluded Jane Cunha (claimant) was able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2005. The claimant participated personally. The employer participated by Greg Barnes, Postmaster. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 3, 1984, as a full-time relief sales and associate clerk. The claimant received no warnings during her employment.

On November 15 and 16, 2004, the claimant properly reported she was ill and could not work. She requested Family Medical Leave Act (FMLA) paperwork to complete to cover her two absences. The claimant returned to work on November 17, 2004. The employer gave the claimant the leave packet on December 1, 2004. The claimant and her physician completed the paperwork including the nature of the claimant's illness but the claimant was denied FMLA. On December 2, 2004, the employer informed the claimant she was required to have her physician complete the employer's Return to Work Certificate. The claimant supplied the employer with a physician's release on December 2, 2004, stating she was able to return to work.

On December 6, 2004, the employer indicated the physician's release was not specific enough and told the claimant to cease working until the employer allowed her to return. The claimant supplied the employer with another physician's release dated December 10, 2004. The employer told the claimant it was not specific enough. The claimant did not understand what was lacking in her releases.

On December 23, 2004, the employer approved the claimant's request for FMLA but would not return the claimant to work. On January 21, 2005, the claimant and employer were involved in a teleconference call. The employer told the claimant she could return to work on January 24, 2005, but further failures to follow instruction would result in disciplinary action. The claimant and her postmaster were unaware of what information the claimant had failed to provide. The claimant returned to work on January 24, 2005, and continues to work for the employer.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she was.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was released to return to work as of December 2, 2004. The claimant is not disqualified from receiving unemployment insurance benefits based on unavailability for work.

The next issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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 claimant was suspended from working from December 6, 2004 to January 24, 2005, for failure to follow instructions. The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer suspended the claimant from work and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. The claimant supplied all information requested. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 21, 2005 decision (reference 01) is affirmed. The claimant was separated from employment. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The claimant is not disqualified from receiving unemployment insurance benefits based on unavailability for work.

bas/sc