

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAVONNE SALINAS**  
Claimant

**APPEAL NO: 06A-UCFE-00028-ET**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 07-30-06 R: 03  
Claimant: Respondent (2)**

Section 96 5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 29, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2006. The claimant participated in the hearing with her husband/representative Christopher Salinas. Linda Lindquist, Postmaster, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time mail clerk for the US Postal Service from May 17, 2006 to July 29, 2006. On July 24, 2006, Linda Lindquist, Postmaster, conducted the claimant's 60-day review. She did a walk-through and found first class mail still in the facility after the claimant was done for the day. She told the claimant she was accountable for the mail and that it was unacceptable to leave first class mail in the post office because it violates postal policy. Ms. Lindquist also told the claimant she could be removed for that offense. On July 26, 2006, Ms. Lindquist returned to the office at 8:00 p.m. and found mail on the counter and in the drop box. She processed the mail and the next morning contacted the bank that left the mail on the counter and three local businesses that left mail in the drop box. The bank stated it left its mail between 4:00 p.m. and 4:15 p.m. and the local businesses stated they left mail at 9:30 a.m., noon, and 12:30 p.m. On July 27, 2006, Ms. Lindquist took the claimant's keys and badge and told her she was being let go for failure to follow proper procedure. The claimant denied leaving any first class mail unprocessed but admits she was the close-out clerk.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies responsibility for the first class mail left at the end of the day July 24 and July 26, 2006, she was the close out clerk and was the last person in the office. Additionally, the other employee beside Ms. Lindquist that worked in the office was on vacation that week. The administrative law judge concludes the claimant was responsible for the mail and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 29, 2006, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,638.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs/pjs