IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CLYDE L GILLESPIE
Claimant

US POSTAL SERVICE
Employer

APPEAL NO. 08A-UCFE-00006-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/24/08 R: 01
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The United States Postal Service filed a timely appeal from the March 24, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on April 16, 2008, continued briefly on April 25, 2008, and concluded on May 8, 2008. Doug Lambert represented the employer and presented testimony through Randy Carpenter, Acting Post Master for the Red Oak Post Office. Claimant Clyde Gillespie participated on April 16 and 25, but elected not to participate on May 8, 2008. The claimant elected not to provide testimony. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which records indicate that no benefits have been disbursed to the claimant. Exhibits 1 through 24, and A through N were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UCFE-00007-JTT.

ISSUE:

Whether the claimant has been suspended or discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clyde Gillespie commenced his employment with the Red Oak Post Office in 1989 and worked as a full-time Regular City Carrier. Mr. Gillespie's immediate supervisor was Jason McCunn, Acting Customer Service Supervisor.

On Tuesday, January 29, 2008, at approximately 12:30 p.m., Mr. Gillespie suffered a slip and fall injury while he was delivering mail in winter weather. When Mr. Gillespie fell, he was not wearing United States Postal Service approved footwear or employer-issued "Yaktrax," designed to attach to his footwear and prevent slips on ice. Mr. Gillespie was instead wearing Thinsulate boots. When Mr. Gillespie fell, his leg was pinned under his body. Mr. Gillespie remained on the ground, in pain, for approximately 10 to 15 minutes. Once Mr. Gillespie got up, he made two or three more deliveries. Mr. Gillespie then drove back to the Post Office. Mr. Gillespie arrived back at the Post Office at 12:50 p.m. At that time, Mr. Gillespie reported to Mr. McCunn that he had fallen at 104 East Valley in Red Oak, that his knee had "popped," that his knee would not bend, and that he needed to see his doctor. Mr. Gillespie then left to seek medical treatment. Mr. Gillespie had

reported the accident within 20 minutes of its occurrence, but had provided incorrect information regarding the street address where the fall occurred.

The employer has a written accident reporting policy. See Exhibit 23. Mr. Gillespie had most recently participated in training concerning the policy on January 9, 2007, one year prior to the accident. See Exhibit 21. Mr. Gillespie's duties under the policy were stated as follows:

> All employees must immediately report any work-related accident or injury in which they are involved to their supervisor. For purposes of this instruction, immediate reporting means advising management as soon as practical after the accident or injury occurs or allowing the least amount of time to pass. In almost all cases this should not exceed a few minutes. Any report of an accident received after the tour on which it occurred can rarely be considered acceptable.

The written policy further indicated that: "It is the responsibility of all employees to comply with this instruction. Failure to report an accident immediately as instructed is considered a serious violation for which corrective action up to and including formal discipline must be considered."

At the same January 9, 2007, training session, the employer had provided written guidance concerning winter walking. See Exhibits 21 and 22. This guidance started with an admonition to wear proper winter footwear. Mr. Gillespie received an annual uniform allowance so that he could purchase United States Postal Service approved footwear from employer-designated venders. On January 10, 2008, the employer had posted or distributed a safety bulletin that reminded employees to use "ice stabilizers" during inclement weather. During the 2007-2008 winter, the employer had issued four sets of "Yaktrax" to Mr. Gillespie.

On January 29, based on Mr. Gillespie's report of injury, Mr. McCunn went to 104 East Valley to do an accident investigation. Mr. McCunn observed the area had snow and ice on the sidewalk and took photos. On January 29, Mr. McCunn completed the required Form 1769 accident report form and forwarded it to the Safety Manager. See Exhibit Four.

Mr. Gillespie did not return to complete his shift on January 29 or return to work during the following days. On January 30, Randy Carpenter, Acting Post Master for the Red Oak Post Office, called Mr. Gillespie's home to check on him, but had to leave a message. On January 30, Mr. Carpenter received a fax from Mr. Gillespie's doctor, Craig Hansen, M.D. The fax indicated that Mr. Gillespie had suffered a right knee sprain and could not work. See Exhibit Five.

On Saturday, February 2, Mr. Gillespie's spouse delivered to the Red Oak Post office a Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, that Mr. Gillespie had completed and signed on February 2. See Exhibit Seven. On the form, Mr. Gillespie corrected the address and indicated that he had fallen on snow covered ice at 304 East Valley in Red Oak, not at 107 East Valley. Mr. Gillespie provided the name and address of a witness and referred the employer to the attached witness statement from Linda Andrew of 304 Valley Street in Red Oak. See Exhibits Eight and I. Ms. Andrew indicated in her statement that she had observed Mr. Gillespie fall in front of her house at 12:30 p.m. on January 29, that his leg went under him when he fell, and that Mr. Gillespie had said he was alright but in pain. Ms. Andrew indicated that it was at least 10 to 15 minutes before Mr. Gillespie got back up. Ms. Andrew's home was two blocks away and on the other side of the street from the address Mr. Gillespie had reported to Mr. McCunn on January 29. Because of the erroneous address information Mr. Gillespie had provided, Mr. McCunn had investigated and documented the wrong site.

Mr. Carpenter received and reviewed the CA-1 Form and Ms. Andrew's statement on Monday, February 4, and added his remarks in the space provided on the second page of CA-1. Mr. Carpenter indicated that Mr. Gillespie had been issued "Yaktrax" to prevent slips and falls, but

was not wearing them at the time of the fall. Mr. Carpenter documented that medical reports showed that Mr. Gillespie was disabled for work. Mr. Carpenter forwarded the Form CA-1 for processing. On February 4, Mr. Carpenter mailed a letter to Mr. Gillespie, directing Mr. Gillespie to telephone Mr. Carpenter for the purpose of a pre-disciplinary meeting. Mr. Carpenter also went to Ms. Andrew's home and interviewed her. Ms. Andrew reiterated what she had put in her written statement.

On February 5, Mr. Carpenter received a memo from Ellen Fischman, Health Resource Management Specialist for the U.S. Postal Service. See Exhibit Nine. The memo indicated that the employer had authorized Continuation of Pay (COP). The memo indicated that: "Latest medical states he is totally disabled from the date of the injury through February 12, 2008." Ms. Fischman indicated that she had been in contact with Mr. Gillespie's doctor regarding limited duty and instructed Mr. Carpenter to follow up with the appropriate paperwork once Mr. Gillespie was released to limited duty.

On February 5, Ms. Gillespie telephoned the Post Office and spoke with Mr. Carpenter. Mr. Gillespie indicated that he did not want to go forward with a pre-disciplinary meeting without a union steward present and Mr. Carpenter agreed to reschedule the meeting with a union steward present. Mr. Carpenter proposed that the pre-disciplinary meeting be conducted via telephone and Mr. Gillespie agreed. Mr. Carpenter told Mr. Gillespie that the employer could accommodate anything other than bed rest prescribed by a medical provider. Mr. Carpenter pointed out that Mr. Gillespie was currently speaking on the phone and, thus, could perform phone duties at work. Mr. Gillespie indicated that his doctor had restricted him from using his right leg. Mr. Gillespie asked whether the employer would accommodate his need to elevate his leg and Mr. Carpenter indicated the employer would. Mr. Gillespie told Mr. Carpenter that his doctor had said he was incapacitated and could not work. Mr. Carpenter then read from a Form CA-17 that spelled out the responsibilities of an employee who was claiming a work-related traumatic injury. See Exhibit 10. The document contains a great deal of information and is very difficult, if not impossible, to follow when read over the telephone. Included in the document is the following:

> You must return to duty immediately after receiving treatment unless placed on total bed rest. You must bring back documentation regarding your work status (limitations, etc.). If your tour of duty has ended, you are required to report for duty on your next scheduled workday or rcontact Management prior to you next scheduled workday.
>
> Failure to report for limited duty can result in termination of COP [continuation of pay] and other Injury Compensation benefits. Also, you could be charged with being Absent Without Leave (AWOL).

The Form CA-17 further indicated that:

> If your condition changes you must notify Management. Violation of medical restrictions stemming from your job-related injury constitutes grounds for termination of employment. Your restrictions apply both on and off the job.

After Mr. Carpenter read the contents of the Form CA-17, he asked Mr. Gillespie if he had any questions, as required by the form. Mr. Gillespie indicated that he did not have any questions. Mr. Carpenter then asked Mr. Gillespie whether he was able to come to work and perform any work. Mr. Gillespie indicated he was unable to return to work until after he had his next appointment with his doctor on February 12. Mr. Gillespie indicated that he needed to keep his leg elevated. Mr. Carpenter told Mr. Gillespie that he would send a page from the Form CA-17 for Mr. Gillespie's doctor to complete in connection with the February 12 appointment. See Exhibit 18. Mr. Carpenter told Mr. Gillespie that he needed the information requested on the form so that the employer would know what duties Ms. Gillespie was able to perform. Mr. Carpenter filled out the supervisor's portion

on the left side of form. This included a breakdown of Mr. Gillespie's duties and contained information regarding lifting, carrying, sitting, standing, walking, and climbing. Mr. Carpenter believes that Mr. Gillespie subsequently added information regarding bending/stooping, twisting, pulling/pushing, simple grasping, and driving a vehicle.

After the telephone call on February 5 ended, Mr. Carpenter followed up by sending Mr. Gillespie a copy of the CA-17 by certified mail. Mr. Gillespie received and signed for the document on February 6.

On February 7, Mr. Carpenter sent a letter to Mr. Gillespie by certified mail. See Exhibit 11. April Gillespie signed for the letter on February 9. Mr. Carpenter reviewed his prior attempts to contact Mr. Gillespie and the telephone conversation of February 5. Mr. Carpenter indicated that on February 6, he had scheduled a pre-disciplinary conference call to occur on February 7 at 8:30 a.m. and had faxed a copy of the CA-1 Form to union steward Dawn Trotter. Mr. Carpenter indicated that Ms. Trotter had contacted Mr. Carpenter at 8:00 a.m. on February 7 to report that Mr. Gillespie's doctor had confined him to bed rest and had prescribed pain medication, and that Mr. Gillespie could not participate in the pre-disciplinary meeting via telephone. Mr. Carpenter indicated that he had told Ms. Trotter that Mr. Gillespie had previously been able to speak with him by phone. Mr. Carpenter indicated that Ms. Trotter said she had spoken with the National Association of Letter Carriers (NALC) and had been instructed not to conduct the pre-disciplinary interview by telephone. Mr. Carpenter told Mr. Gillespie that he was perplexed by how Mr. Gillespie could communicate so much to the union steward, but not be able to participate in a telephonic pre-disciplinary meeting. Mr. Carpenter directed Mr. Gillespie to provide "any" documentation relating to his absence and to notify Mr. Carpenter directly when he became able to participate in a pre-disciplinary interview. Mr. Carpenter copied the letter to Ms. Trotter and to the employer's Labor Relations department.

On February 11, the employer's Family and Medical Leave Act (FMLA) Coordinator notified Mr. Gillespie that his January 29 request for FMLA for the period of January 29 through February 12 had been approved. See Exhibit 13.

On February 12, Mr. Carpenter called Mr. Gillespie's home and asked him to advise Mr. Carpenter of his health status after he saw the doctor on February 12. Mr. Carpenter had not received a telephone call from Mr. Gillespie by the time he left for the day. However, at 2:34 p.m. the employer received a faxed doctor's note, dated February 12. See Exhibit 14. Dr. Hansen indicated that Mr. Gillespie had a right medial collateral ligament (MCL) sprain and that Mr. Gillespie was released to perform light-duty, sit down work only.

On February 13, Mr. Gillespie reported for work. Mr. Gillespie did not return the page from the Form CA-17 that Mr. Carpenter had sent on February 5 for Mr. Gillespie to take to his doctor appointment. See Exhibit 18. Because Mr. Gillespie had not returned the page from the Form CA-17, Mr. Carpenter had Mr. Gillespie sit down, but perform no work. Mr. Carpenter told Mr. Gillespie that he needed the page from the Form CA-17 before he could assign light-duty work to Mr. Gillespie. On February 13, Dr. Hansen completed some information on the form, but limited the information that what was provided on the doctor's note of February 12, that Mr. Gillespie had a right MCL sprain and was "limited to sit down work." Dr. Hansen had not provided an itemized breakdown of Mr. Gillespie's work ability that would correspond to the work activities Mr. Carpenter had noted on the left side of the form. Mr. Gillespie provided the CA-17 to the employer when he reported for work on February 14.

Though Mr. Gillespie's injury had occurred in the course of the employment, the employer did not arrange for Mr. Gillespie to be evaluated by a doctor of the employer's choosing to determine Mr. Gillespie's ability to perform his work duties.

At 12:37 p.m. on February 14, Dr. Hansen's office faxed an additional doctor's note. See Exhibit 17. This note indicated that Mr. Gillespie had a right knee MCL sprain and that Mr. Gillespie was released to perform light-duty work. Dr. Hansen specified that Mr. Gillespie was to perform "sitting work" and that he could handle mail and answer phones. Dr. Hansen indicated that Mr. Gillespie should elevate his right leg as needed.

On February 14, Mr. Carpenter presented Mr. Gillespie with an "Offer of Modified Assignment (Limited Duty)." See Exhibit 15. Through this document, Mr. Carpenter assigned Mr. Gillespie to perform miscellaneous office duties that could be performed from a sitting position. Mr. Carpenter and Mr. Gillespie both signed the document. Mr. Carpenter did not in fact have Mr. Gillespie perform any duties. Instead, Mr. Carpenter compelled Mr. Gillespie to sit on a stool all day, at times in the middle of the room, and essentially do nothing. Mr. Gillespie was not given the opportunity to elevate his leg. Mr. Gillespie's work duties, or lack of the same, remained unchanged until February 22, when Mr. Carpenter notified Mr. Gillespie that he had recommended that Mr. Gillespie be removed from his employment. See Exhibit N.

On February 15, Mr. Carpenter conducted the pre-disciplinary interview with Mr. Gillespie participating in-person and Steward Dawn Trotter participating by telephone. On February 15, Mr. Carpenter prepared a "transcription" of interview. See Exhibit 19. During the interview Mr. Gillespie admitted that he erred in reporting the street address where he fell on January 29. Mr. Gillespie denied that he had failed to report his accident "immediately" and asserted he had done so. Mr. Gillespie indicated that he did not have a cell phone. Mr. Carpenter asked Mr. Gillespie why he had not had Ms. Andrew telephone the Post Office. Mr. Gillespie responded thought he would be alright. Mr. Gillespie indicated that he had been wearing Thinsulate boots at that time and admitted that the boots were not United States Postal Service approved footwear. Mr. Gillespie admitted that he had not been wearing his Yaktrax. This ended the pre-disciplinary interview.

After the pre-disciplinary interview, Mr. Carpenter prepared a "Disciplinary Action Proposal" on February 15. See Exhibit 20. Through the proposal, Mr. Carpenter recommended that Mr. Gillespie be removed (discharged) from the employment. Mr. Carpenter forwarded the proposal to the employer's Labor Relations office. In the proposal, Mr. Carpenter stated that Mr. Gillespie had failed to report his accident immediately and that Mr. Gillespie had given an erroneous address when he reported the accident, thus hampering the accident investigation. Mr. Carpenter stated that Mr. Gillespie had failed to work in a safe manner at the time of the fall by failing to wear approved footwear or use the Yaktrax that had been issued to him. Mr. Carpenter listed Mr. Gillespie's prior discipline. On October 11, 2006, the employer issued a "letter of warning" for failure to work in a safe manner, after Mr. Gillespie struck a stationary pole in a parking lot with his mail vehicle. On July 20, 2007, the employer issued a seven-day suspension after Mr. Gillespie attempted to pet a customer's Great Dane and sustained a dog bite. On August 24, 2007 the employer initially issued a 14-day suspension, but later reduced the discipline to a "job discussion." See Exhibit L. Under the collective bargaining agreement, a job discussion was not deemed discipline. On November 19, 2007, the employer issued a 14-day suspension for unacceptable conduct after Mr. Gillespie became upset in the workplace and directed profanity at Mr. McCunn.

On February 21, Mr. Carpenter received and discussed with Mr. Gillespie a "Notice of Removal." See Exhibit One. The document reiterated what Mr. Carpenter had placed in the "Disciplinary Action Proposal." The "Notice of Removal" cited section 814.2 of the Employee and Labor Relations Manual, which section states that employees are responsible for complying with OSHA and Postal Service safety and health regulations procedures, and practices, including the use of approved personal protective equipment. The section also states that employees are responsible for immediately reporting to their supervisors any accident or injury in which they are involved, regardless of the extent of injury. The Notice of Removal also cited the Central Plains District Accident Reporting Procedures regarding immediately reporting accidents. The Notice of Removal

listed the prior disciplinary matters. Finally, the Notice of Removal notified Mr. Gillespie of his right to file a grievance.

Mr. Gillespie did file a grievance. Mr. Gillespie was placed on paid administrative leave with pay. On March 20, the employer issued an "Amendment to Notice of Removal Dated February 21, 2008." The document notified Mr. Gillespie that he would be removed from Postal Service employment no sooner than 30 days of his receipt of the Amendment. The document notified Mr. Gillespie that he had additional rights as a veteran outside the grievance process.

Mr. Gillespie continued on paid suspension through the completion date of the appeal hearing, May 8, 2008, pending the outcome of the grievance process.

Mr. Gillespie has a history of foot problems and foot pain, as well as treatment for the same. The treatment has included pain medication, injections, orthotics, and special shoes and/or boots. Mr. Gillespie sought medical treatment for his foot problems in 1997. See Exhibit D. On September 16, 1997, Mr. Gillespie's doctor diagnosed bursitis/capsulitis in one of the metatarsophalangeal (MP) joints of Mr. Gillespie's right foot, and neuritis in Mr. Gillespie's right foot. Mr. Gillespie returned to the doctor on December 1, 1997. Mr. Gillespie showed his doctor the "spikes" that the Postal Service had distributed to the carriers to wear on the outside of their footwear. Mr. Gillespie told his doctor that he had tried wearing the spikes, but that they caused pressure points and pain on his feet.

Mr. Gillespie received additional treatment for his foot problems in 2000. See Exhibit C. On April 18, 2000, Mr. Gillespie reported to his doctor that injections he had received and the orthotics he wore provided some relief, but that he continued to experience heel pain that was affecting his job performance. Mr. Gillespie's doctor diagnosed bilateral plantar calcaneal spur, bilateral pronation, and noted a history of bilateral plantar fasciitis. The doctor recommended that Mr. Gillespie wear a shoe with a higher heel and provided Mr. Gillespie with a note to present to the employer, indicating that Mr. Gillespie should be allowed to wear "Carolina" work boots. See Exhibit B. On May 15, 2000, Mr. Gillespie's doctor diagnosed plantar faciitis with heel spur syndrome. Mr. Gillespie indicated to his doctor that his feet were causing him a lot of problems at work. The doctor recommended that Mr. Gillespie decrease some of his activities at work. The doctor provided Mr. Gillespie with a note to present to the employer, indicating that the weight of his mailbag should not exceed 10 pounds. The doctor indicated that Mr. Gillespie should stay in the "Carolina" work boots. The doctor also referred Mr. Gillespie for physical therapy.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish misconduct in connection with the employment that would disqualify Mr. Gillespie for unemployment insurance benefits. The evidence establishes that Mr. Gillespie had good cause for not wearing employer-approved shoes/boots or the employer-issued "Yaktrax." The evidence indicates that both aggravated his longstanding and significant foot problems. Mr. Gillespie had previously made the employer aware of his foot problems and had provided the employer with notes from his doctor that addressed his need to wear non-U.S.P.S.-approved footwear. The evidence indicates that Mr. Gillespie was in fact wearing some sort of winter boot at the time he fell. It appears that Mr. Gillespie worked in non-U.S.P.S.-approved footwear for at least seven and a half years before his January 29, 2008 fall. The evidence fails to establish that Mr. Gillespie intentionally violated the employer's accident reporting policy on January 29, 2008. Mr. Gillespie lacked a cell phone. Mr. Gillespie was on the ground in pain for 10 to15 minutes before he was able to get up. While Mr. Gillespie should not have made the two or three additional deliveries, the decision to make these delivers was the result of a good-faith error in judgment, not willful disregard of the interests of the employer. The evidence indicates that Mr. Gillespie drove to the Post Office within a few minutes of getting up from the ground and within 20 minutes of the fall itself. The evidence indicates that the fall was reported to the supervisor within 20 minutes of its occurrence. The evidence fails to establish that Mr. Gillespie intentionally

misrepresented the location of the fall when he reported the fall to his supervisor. The evidence indicates that Mr. Gillespie provided the employer with corrected information as soon as it became available. The evidence fails to establish that Mr. Gillespie intentionally hindered the employer's attempt to assess his ability to perform work. One cannot assume that Mr. Gillespie was in control of Dr. Hansen or Dr. Hansen's completion of the employer's Form CA-17. The evidence raises the question of why the employer did not arrange its own medical evaluation or treatment of Mr. Gillespie's injury, given that it occurred in the course of the employment. Given that the administrative law judge finds no misconduct in connection with the final incident that prompted the Removal, the administrative law judge need not consider the prior disciplinary actions. See 871 IAC 24.32(8).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Gillespie was placed on disciplinary suspension and/or discharged for no disqualifying reason. Accordingly, Mr. Gillespie is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Gillespie.

DECISION:

The Agency representative's March 24, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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