**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KURT W KEASLING**
Claimant

**FEDERAL EXPRESS CORP**
Employer

**APPEAL NO: 18A-UI-06387-JE-T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 05/13/18**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 30, 2018, reference 01, 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 June 29, 2018. The claimant participated in the hearing. Kady Eagen, Operations Manager and Alyce Smolsky, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

**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 full-time courier for Federal Express from March 10, 2014 to May 9, 2018. He was discharged for receiving his third warning letter in 12 months, in violation of the employer's policy.

The claimant's work group was told in December 2017 their one forced Saturday of the year would occur in April 2018. The claimant did not make plans on any Saturday in April 2018, but was not scheduled to work. On May 4, 2018, Operations Manager Kady Eagen notified the claimant he was scheduled to work his forced Saturday on May 5, 2018. The claimant believed the possibility of a forced Saturday ended April 28, 2018, and consequently his parents were coming in from out of town to go to the Pella Tulip Festival with the claimant, his wife and their children. As a result, the claimant told Ms. Eagen he could not work May 5, 2018, as he was not aware the employer extends the forced Saturday month to the first Saturday of the subsequent month if the week begins in the previous month. Therefore, because April 30, 2018, was a Monday, the following Saturday, May 5, 2018, could be a forced Saturday for the April work group. The claimant attempted to find a replacement before contacting Ms. Eagen and stating he could not work May 5, 2018.

On Monday, May 7, 2018, the claimant reported for work and was suspended while the employer investigated his "willful absence." On May 9, 2018, the employer notified the claimant he was receiving a warning letter which was his third in eight months. If an employee receives three warning letters in 12 months he is discharged from employment. The employer informed the claimant May 9, 2018, his employment was terminated. The claimant did not know that if he did not work May 5, 2018, he would receive a warning letter and face termination of his employment. If he had known that he would have cancelled his plans and reported for work.

The claimant received a warning letter September 21, 2017. He agrees he falsified a delivery by stating he was at a stop and attempted a delivery but did not actually do it. On October 5, 2017, he received a warning letter for late packages. The claimant stated packages were late every day and he did not understand why he received a warning about that incident.

The claimant has not filed a weekly claim for benefits since opening his claim and therefore there is no overpayment issue.

**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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 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). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant told the employer he could not work Saturday, May 5, 2018, he had a reasonable belief that his forced Saturday would occur in the month of April 2018 and made himself available for the four Saturdays in April 2018. He was not aware of the employer's policy that if a week starts in April with its Saturday in May, he was to be available for that Saturday as well. The claimant made significant plans for Saturday, May 5, 2018, believing his forced Saturdays had passed and did not know he was risking his job by not working May 5, 2018. The employer did not tell him it was going to issue him a third warning letter and that would result in his suspension and termination from employment. In fairness, the employer should have notified the claimant if he did not work Saturday, May 5, 2018, he would lose his job so he knew the choice he was making. As it was, the claimant was expected to know that a forced Saturday in April included May 5, 2018, and that he would lose his job if he did not work that Saturday. Additionally, the employer did not give the claimant sufficient notice that he needed to work his forced Saturday in April on May 5, 2018, as it waited until May 4, 2018, to notify him.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The May 30, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn