

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL NASH
Claimant

APPEAL NO: 08A-UCFE-00018-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 05/11/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

U. S. Postal Service (employer) appealed a representative's June 30, 2008 decision (reference 01) that concluded Daniel Nash (claimant) was qualified to receive benefits, and the employer's account could be charged because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2008. The claimant participated in the hearing. Angie Pettinger, a labor relations specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 17, 2000. He worked as a full-time mail handler. Most recently, the claimant worked third shift. The claimant was also a union steward.

When T.E., a hearing impaired employee, began working third shift, the claimant worked with him so other employees accepted him. When the claimant and T.E. worked together they usually did not have any problems. The claimant, however, had problems getting along with K., a female employee.

On March 22, 2008, the claimant was working with T.E. and wanted to finish cleaning an area so they could move to a different job. T.E. was not helping the claimant. The claimant thought T.E. intentionally avoided the claimant so he would not have to help clean. In an attempt to get T.E.'s attention and get him to help the claimant, the claimant threw a postal scanner in T.E.'s direction. The scanner landed in front of T.E. and then slid on the floor. The battery pack on the scanner came off and one of the parts slid towards K's foot and hit K.'s foot. When the scanner hit the floor, this got T.E.'s attention. Either T.E. or K. brought the scanner back to the claimant. He put the battery pack back on the scanner. The scanner was not damaged.

About 15 minutes later, the claimant and T.E. had a verbal confrontation about another incident. The claimant understood T.E. was mad at him, not for throwing the scanner, but as a result of the confrontation they had later.

K. reported that the claimant threw the scanner at T.E. in attempt to hit him. The employer concluded the claimant tried to hit T.E. with the scanner. There were no previous problems and the claimant's job was not in jeopardy before this incident. On March 27, 2008, the employer discharged the claimant for his improper conduct – throwing a scanner at another employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant was the only witness with personal knowledge as to what happened on March 22, his testimony must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing. This means, the claimant's version as to what happened is credible and is reflected in the findings of fact.

The employer established business reasons for discharging the claimant. The claimant did not throw the scanner at T.E. to hit him as someone reported to the employer. Instead, the claimant threw the scanner in front of T.E. to get his attention. The fact the claimant threw the scanner amounts to poor judgment, but this isolated incident does not rise to the level of work-connected misconduct. The claimant did not commit work-connected misconduct. As of May 11, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's June 30, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons when the claimant used poor judgment. The claimant did not commit work-connected misconduct. As of May 11, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs