

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

LEE SCHECHINGER
1304 DURANT ST
HARLAN IA 51537-1234

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

Appeal Number: 06A-UCFE-00026-BT
OC: 06/18/06 R: 01
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.32 (9) – Suspension/Disciplinary Layoff
Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lee Schechinger (claimant) appealed an unemployment insurance decision dated July 28, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from the United States Postal Service (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on August 22, 2006. The claimant participated in the hearing. The employer participated through Doug Lambert, Labor Relations Specialist, and Tom Bertelson, former Postmaster from Logan, Iowa. Employer's Exhibits One through Five were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed from February 26, 2000 through June 1, 2006 and was most recently working as a full-time city letter carrier. He was previously discharged on April 22, 2005 for falsification of United States Post Office documentation. As a result of his grievance with the union, a settlement was reached and the claimant was reinstated per a last chance agreement. The last chance agreement required the claimant to comply with the postal codes of conduct as defined by postal rules and provisions of the Employee Labor Relations Manual (ELM) and the Postal Operations Manual (POM) 12. He was also required to be an exemplary employee and failure to meet any of the requirements as listed in his last chance agreement would result in his discharge.

The claimant has been suspended without pay for violating ELM 660 and POM 12 as a result of his gambling on March 17, 2006 while in uniform and on duty. Employees are prohibited from participating in any gambling activity while on duty. Employees are on duty from the time they punch in at the time clock in the morning until the time they punch out at night. The claimant played the touch play machine at 1:18 p.m. on March 17, 2006 at the Logan Country Store and won \$1,000.00. When initially questioned as to his activities, he falsely stated he had not been gambling and later admitted he made the false statement because he was nervous. He was suspended with pay on March 24, 2006 and a notice of removal letter was sent to him on April 26, 2006, which advised him he would be removed from service no sooner than 30 calendar days from his receipt of the letter. He was also advised he had the right to file a grievance with the union within 14 days of the receipt of the letter per the collective bargaining contract. The claimant filed a grievance and, as of June 1, 2006, the discharge was upheld by the union. Consequently, the employer placed the claimant in a non-pay status as of June 1, 2006 until the completion of the union arbitration.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. Where an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code section 96.5-2-a.

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 to prove the claimant was suspended or 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 claimant was discharged for violation of a last chance agreement when he violated the rules of conduct by gambling on duty. He does not deny gambling but contends he was not on duty since he was on his lunch break. The employer considers employees to be on duty until they clock out at the end of the day and at all times they are wearing their work uniform. The claimant was wearing his uniform while gambling and that was how the employer became aware of his actions, since someone complained about his activities.

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). In the case herein, the employer took action immediately upon learning of the claimant's conduct but was limited from taking final action due to the collective bargaining agreement. Consequently, the delay is reasonable and is not considered a past act. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 28, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was suspended from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sda/kjw