

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHONG H HUMPHREY
Claimant

APPEAL NO. 08A-UCFE-00010-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 03/23/08 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 17, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. An initial telephone hearing was scheduled for May 13, 2008, but was rescheduled for an in-person hearing due to problems understanding the claimant over the phone. The in-person hearing was scheduled for June 5, 2008, at 10:00 a.m. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Maureen Tuttle participated in the hearing on behalf of the employer with witnesses Jan Grace and Laura Valle. Exhibits One through Eight were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a rural mail carrier from November 17, 2001, to February 16, 2008. She was informed and understood that under the employer's work rules, employees were expected to obey the instructions of their supervisors, maintain harmonious working relationships, and not do anything to contribute to an unpleasant working environment.

The claimant was involved in a vehicle accident while driving a postal mail truck on January 18, 2008, for which the employer determined the claimant was at fault. Her supervisor, Laura Valle, proposed that she be suspended for unsafe driving practiced. The documentation supporting the discipline was given to the claimant's union representative, but she loudly demanded that Valle provide her with the paperwork on several occasions. The last time was on January 29. Valle again told the claimant that her union representative had all of the information, but the claimant continued to raise her voice toward Valle in front of other employees and demanded the paperwork.

Valle told the station manager, Jan Grace, about what happened. They decided that Grace would give the claimant all the paperwork on January 30. When Grace attempted to give her the paperwork, she angrily yelled at him in front of other employees. Valle suggested they go to Grace's office. The union steward was called to the office. Valle and Grace informed the claimant that her behavior on the work floor was unacceptable and they were sending her home for the day so that she could calm down and return the following day. The claimant became belligerent and accused Valle of being a liar. She approached Valle pointing forcefully with her finger and called Valle a liar, which Valle considered threatening. Valle and Grace told her several times to sit down, but she did not listen. When the claimant finally sat down, they told her again that she needed to go home for the day. She repeatedly insisted that she was being fired, but Valle and Grace reassured her that she was not. The claimant then loudly complained about past incidents where employees and supervisors had mistreated her.

As a result of the claimant's behavior on January 30, she was placed on emergency placement status pending a fitness for duty evaluation by a doctor. On February 8, a doctor evaluated her and determined she was fit to return to work. When the claimant returned to work on February 13, 2008, Grace informed her that her behavior on January 30 was improper, and if repeated, could lead to her removal.

On February 16, the mail carrier assigned to deliver mail to the claimant's residence routinely asked the claimant if she wanted to pick up a piece of mail or have him deliver it. The claimant told him that she was not supposed to get her mail at the post office. She then started to write "refused" on the letter, but the mail carrier told her that she would have to refuse the piece of mail after it was delivered. The claimant then went to Grace and falsely and repeatedly accused him of ordering the mail carrier to give her a piece of mail. After confirming what had happened with the mail carrier, Grace instructed the claimant to go back to work.

The claimant disobeyed Grace's instruction and went outside. Grace asked her what she was doing, and she said she wanted a smoke. Grace decided to leave the claimant alone and allow her a break. About 20 minutes later, Grace noticed she was still outside talking on her cell phone. The claimant had called the West Des Moines Police Department and falsely accused Grace of threatening her. When Grace saw her talking to two police officers, he approached them and heard the claimant discussing her vehicle accident, the emergency placement, and being threatened by Grace. Grace introduced himself and informed the officers that the situation was an internal Postal Service matter.

Everyone went into the post office and attempted to calm the claimant down. After the police officers left, Grace and the union steward met with the claimant. Grace reminded her about their conversation on February 13. The claimant continued to make accusations against Grace, including that he was trying to take her job and had done something to her 10 years before. As a result of her continuing belligerent conduct, Grace informed the claimant that she needed to leave and that he was going to propose that she be removed based on her conduct.

The claimant was suspended during the removal process and was informed about her discharge on May 11, 2008. She was removed due to her improper conduct on February 16, 2008, and her failure to follow her supervisor's instructions regarding her behavior.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 23, 2008. The claimant filed for and received a total of \$3,600.00 in benefits for the weeks between March 23 and May 31, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 claimant's conduct 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. She received a warning regarding her belligerent and insubordinate conduct on February 13, 2008, but continued to exhibit hostile and insubordinate behavior on February 16. Although there was a time lapse from the claimant's last day of work to the date when she was removed from her position, she was suspended and notified about her proposed removal. The discharge, therefore, was for a current act of misconduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$3,600.00 in benefits for the weeks between March 23 and May 31, 2008.

DECISION:

The unemployment insurance decision dated April 17, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$3,600.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw