

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE L DOUGLAS
Claimant

APPEAL NO. 08A-UI-00952-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

OC: 07-08-07 R: 02
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 16, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 12, 2008. The claimant did participate. The employer did participate through Chris Higgins, Operations Manager and was represented by David Williams of TALX UC eXpress.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a courier, full-time, beginning September 20, 1984, through December 21, 2007, when she was discharged.

The claimant was discharged because the employer discovered that on December 12, 2007, the claimant delivered two packages, each of which required a signature from the customer, without obtaining the signature. The employer became aware of the situation when a customer came into their office in Des Moines and complained that a package that she did not want, and that did require she sign for it, had been left on her front porch. The customer had to drive thirty miles to return the package to Federal Express. As a result of the complaint, Mr. Higgins investigated. He discovered that the claimant had manually over-ridden the system in order to leave the delivery. Mr. Higgins copied the label and found that the scanning device he used, which was identical to the one the claimant would have used, worked fine on the label. The claimant overrode the system and manually entered the number instead of scanning it so that she could leave the package without the signature.

At hearing, the claimant admits that on December 12 she left another package that also required a signature on a customer's back porch because the customer, who was shoveling snow, asked her to just leave it on the porch. The claimant had the opportunity to get the customer's signature, but chose not to because the customer asked her to leave the package on the porch. It was not up to the person who was receiving the package to determine whether their signature was required. The customer who sent the package paid extra fees to obtain signatures. The claimant again manually

overrode the scanner to manually enter the number into the scanner so she could make the delivery without the customer signature.

The claimant had been warned six months prior that a falsification of a delivery order would or could result in her discharge. The claimant knew that she was required to obtain signatures for some packages.

The only two packages that were entered manually by the claimant on December 12 were two that required a signature, which the claimant did not obtain. When both of the packages were loaded onto the claimant's truck that morning, they were scanned in by the claimant, indicating that her scanner worked on each label that morning. Under the employer's policy, falsification of delivery records is a terminable offense.

The claimant has received unemployment benefits since filing a claim with an effective date of July 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

If employees fail to obtain signatures for packages that are required by the sender, those customers of the employer could stop doing business with the employer if they pay for services not delivered. It is in the employer's best interest for signatures to be obtained when the customer requests them.

The claimant manually overrode her scanner so she could leave packages that required a delivery signature without obtaining the required signatures. The administrative law judge found the claimant's testimony that she never thought to check to see if the packages she was manually overriding would need a signature particularly unbelievable. A person who had been delivering packages as long as the claimant would certainly have known that some packages required signature; and if she was manually overriding the system, which she knew would disable the signature alert, she would have checked to see if those packages could be left without signatures. The claimant's testimony was just simply not believable given her years on the job. The claimant's allegation that she was discharged due to a complaint of harassment about a coworker not involved in the delivery situation at all is also not persuasive. It was the claimant's own conduct, that is her failure to obtain the proper signatures, that led to her discharge, not anything another coworker did or said. The claimant knew that to falsify a delivery record could lead to her discharge. The administrative law judge is persuaded that the claimant intentionally manually overrode the scanner so she could leave packages she knew or should have know required a signature, without obtaining them. Her conduct constitutes disqualifying misconduct. Benefits are denied.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 16, 2008, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,041.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw