

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE WHISTLER**  
Claimant

**APPEAL NO: 15A-UI-05024-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 03/29/15  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 16, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 3, 2015. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 part-time ramp employee for United Parcel Service from June 4, 2007 to April 1, 2015. She was discharged after being accused of hitting another employee with her elbow.

The claimant works at the employer's airport location and guides stairs to planes. On April 1, 2015, co-worker Dajsha McDonald was behind the claimant as the claimant was attempting to move a staircase into place. Ms. McDonald walked in front of the claimant and accused her of hitting and pushing her. The claimant did not feel any contact with Ms. McDonald and there were no personal or work-related issues going on between them. Ms. McDonald began yelling at the claimant and continued until a supervisor intervened and removed Ms. McDonald from the area. The claimant pushed the staircase into place and then both she and Ms. McDonald were taken to the office and instructed to write statements regarding what happened. After the claimant and Ms. McDonald completed their written accounts about the incident the claimant was informed her employment was terminated effective immediately.

## 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:

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.

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).

The claimant and Ms. McDonald did not have any work related or personal issues prior to the April 1, 2015, incident and the claimant denies any physical contact with Ms. McDonald, either intentional or accidental, as the claimant did not feel any contact with Ms. McDonald.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The April 16, 2015, reference 01, decision is reversed. 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/css