

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN M LAMB
Claimant

APPEAL NO. 11A-UI-10443-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAIL SERVICES LLC
Employer

OC:07/10/11
Claimant: Appellant (2)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated July 29, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 31, 2011. Claimant participated. Employer participated by Terry Sedivec, General Manager. The record consists of the testimony of Terry Sedivec and the testimony of Steven Lamb.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer's business consists of a printing and mailing facility and a transportation department that does collection and sorting of mail for customers. The claimant was hired on March 17, 2003, as a part-time delivery driver. He was promoted to supervisor of the transportation department in January 2010. The claimant's last day of work was July 11, 2011. The claimant was terminated on July 11, 2011.

The incident that led to the claimant's termination occurred on July 1, 2011. One particular delivery of mail had a critical timeline and needed to be delivered on July 1, 2011. The delivery was for the employer's largest client. The claimant assigned the delivery to a driver and that driver forgot to make the delivery. The claimant did not check to determine if the mail had been delivered. The employer considered this to be a critical lapse of judgment on the part of the claimant. He was terminated after an investigation that began on July 5, 2011, when the employer was notified about the late delivery.

REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct specifically excludes mistakes of judgment or discretion or simple negligence in an isolated situation. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

There is insufficient evidence in this record to show that the claimant was discharged for a current act of misconduct. The claimant clearly made an error in failing to follow up on a critical mail delivery for one of the employer's most important customers. The claimant assigned the

delivery to another driver, who forgot to make the delivery. As the supervisor, the claimant was ultimately responsible for making sure that the deliveries were made. Mr. Sedivec referred to the claimant's conduct as a "lapse of judgment." Although the claimant had been counseled on his failure to monitor cell phone usage by another employee, there is no evidence that he had a practice of missing critical mail deliveries.

The administrative law judge concludes that the incident that led to the claimant's termination was an error of judgment or discretion or negligence in an isolated situation. The employer may have had good business reasons for terminating the claimant, but the employer has not shown misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 29, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css