

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN T BRITTON
Claimant

APPEAL NO. 13A-UI-12338-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 09/29/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 23, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on November 26, 2013. The claimant participated personally. The employer participated by Duane Hepker, business manager. The record consists of the testimony of Duane Hepker; the testimony of Kevin Britton; and Employer's Exhibits 1-4.

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 is a small package delivery and pick up service. The claimant was hired to work part time in May 2006. He became a full-time driver in May 2009. His last day of work was September 18, 2013. He was terminated on September 19, 2013.

The incident that led to the claimant's termination occurred on September 18, 2013. The claimant was involved in a motor vehicle accident with a passenger car. The claimant was not at fault in the accident and was not issued a ticket by law enforcement. The driver of the passenger car was at fault for failing to yield to the claimant. The claimant filed a grievance over his termination and he has since been returned to work for the employer. The claimant had no history of accidents or reckless driving.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits 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 excludes isolated instances of negligence. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence of misconduct in this case. The claimant was involved in an accident that was not his fault and was terminated because of that accident. The other driver was responsible for the accident. The claimant had never been involved in an accident nor was there any history of reckless or careless driving. The fact that the claimant got his job back is further evidence that there was no misconduct in this case. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 23, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs