

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES E ROTHE
Claimant

APPEAL NO. 10A-UCFE-00022-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 02/21/10
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 13, 2010, reference 01, that concluded the claimant had left work due to an injury and no work was available when he offered to return to work. A telephone hearing was held on July 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Karen Rothe. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a mail processing clerk at the Sioux City Post office from October 8, 1985, to February 23, 2010.

In December 2009, the claimant found some gift cards loose in the mail. Instead of turning them into the dead letter department as required, the claimant kept them and ended up redeeming the gift cards on purchases.

The claimant suffered a seizure at work in April 2009, for which the claimant was treated with medication. His doctor has told the claimant that his brain injury and/or medication side effect could explain his conduct as they could cause confusion and lack of impulse control.

At some point, the employer discovered the gift cards had been redeemed and found out the claimant was who redeemed the cards. He was suspended February 23, 2010, and later discharged for taking and redeeming the gift cards.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

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.

While it is quite possible that the outcome of this case could have been different if the employer had participated, the employer has failed to meet its burden to show the claimant was discharged for a current act of work-connected misconduct. The employer submitted paperwork with their appeal, which was not admitted into evidence because there was no one at the hearing to request that it be admitted and to admit such evidence on my own motion would have clearly crossed the line from acting as an impartial decision maker to acting as an advocate for the absent employer. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

The claimant testified about having a seizure condition that affects his coherent thinking. This raises an issue as to whether the claimant is truly able to and available for work. This issue is remanded to the Agency to have the claimant's doctor complete a medical statement regarding his ability to work.

DECISION:

The unemployment insurance decision dated May 13, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The issue of whether the claimant is able to and available for work is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs