

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARDS M GORGAS**  
Claimant

**APPEAL NO: 11A-UI-12249-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 08/14/11  
Claimant: Appellant (1)**

Iowa Code § 96.5(2) a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 6, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Eric Krumme appeared on the employer's behalf. Jeremy Samuelson was contacted to testify on the employer's behalf, but he was not available for the hearing and did not respond to message left by the administrative law judge. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 1989. He worked as a full-time sorter. In 2011, the employer disciplined the claimant for on-going attendance issues. The employer suspended him in mid-February and discharged him on April 8, 2011. The claimant appealed or grieved his suspension and discharge.

On June 19, 2011, the claimant's suspension grievance was decided that he would be suspended for three days and then return to work. His termination grievance decision was deadlocked and was to be heard on August 1 by a higher board or committee.

On July 19, the claimant notified the employer he was unable to work because a next door neighbor had a fire earlier and appliances had been moved to a shared driveway so the claimant could not get out of his home. The claimant called the employer on July 20 and reported he was unable to work because of problems associated with the water that had been used to put out his neighbor's fire. The employer questioned the claimant's excuses for being absent on July 19 and 20. The employer checked the public records and learned the fire department had NOT been called to the claimant's neighbors' homes on July 19. The employer

learned on July 26 that no fireman had gone to the claimant's address or his neighbors' homes on July 19.

When the employer talked to the claimant on July 26 about the discrepancy between his reported reasons for not reporting to work and the public records, the claimant admitted he had not been truthful. On July 19, a close friend experienced medical issues. The claimant decided he needed to help this person get through a very difficult time by staying with this person. While his neighbor had a kitchen fire, the claimant exaggerated the fire because he did not want to tell the employer about his friend's medical situation.

The union contract states in part that if an employee is dishonest, the result is a non-working dischargeable offense. After the employer learned the claimant had not been honest about the reason for his July 19 and 20 absences, the employer discharged him on July 27.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant believed the employer wanted an excuse to discharge him. When the claimant made the decision to be dishonest about why he was not reporting to work on July 19 and 20, the claimant opened the door for the employer to discharge him. The claimant also asserted the employer should have offered him a drug treatment program through the Employee Assistance Program. The evidence does not establish the claimant asked for any assistance prior to July 26. If he had requested assistance earlier, the employer would have directed him the Employee Assistance Program.

The facts establish the claimant knew or should have known his job was in jeopardy for on-going attendance issues. Instead of being honest about the reason he did not go to work on July 19 and 20, the claimant made up a story. The claimant was not required to give the employer details of a friend's medical issues. When the claimant was dishonest about the reasons for his absence these two days, he intentionally and substantially disregarded the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of August 14, 2011, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's September 6, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 14, 2011.

This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css