

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA R BROWN
Claimant

APPEAL NO. 07O-UCFE-00028-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE CLAIMS
Employer

**OC: 05/27/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

U.S. Postal Service Claims (employer) appealed a representative's June 25, 2007 decision (reference 01) that concluded Julia Brown (claimant) was discharged and there was no evidence of willful or deliberate misconduct. A hearing was held on September 17, 2007, following due notice pursuant to Remand Order of the Employment Appeal Board dated August 28, 2007. The claimant participated personally. The employer participated by Angie Pettinger, Labor Relations Specialist, and Jim Harpold, Superintendent of Distribution and Operations. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 28, 1987, as a full-time mail processing clerk. The employer issued the claimant warnings on February 16, June 22, and December 5, 2006, for failure to follow instructions.

On April 13, 2007, the claimant was trying to help a co-worker who was behind. The claimant shut off her machine. The employer asked the claimant to turn it on repeatedly, but the claimant did not want to turn it on because of the co-worker's situation. The employer sent the claimant home early. On April 25, 2007, the employer told the claimant she was terminated but could work until May 25, 2007.

On May 13, 2007, a cafeteria worker complained that the claimant smashed sandwiches together. The claimant did not do so, but the employer believed the cafeteria worker. The employer ended the claimant's employment on May 14, 2007, but continued to pay her through May 25, 2007.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer did not provide an eyewitness for the May 13, 2007, events.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct, but that there was a final incident of misconduct that precipitated the discharge. The employer provided two last incidents. The first one occurred on April 13, 2007. The claimant was not discharged until April 25, 2007, and then allowed to work until May 14, 2007. The elapsed time was too great between the final incident and the termination. The

employer has failed to provide any evidence of willful and deliberate misconduct that was the final incident leading to the discharge.

The other final incident occurred on May 13, 2007. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's June 25, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw