

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NELS T BECK**  
Claimant

**APPEAL NO. 08A-UCFE-00013-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 04/20/08 R: 02  
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The United States Postal Service filed a timely appeal from the May 15, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on June 24, 2008. Claimant Nels Beck participated. Angie Pettinger, Labor Relations Specialist, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Nine into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Nels Beck was employed by the United States Postal Service as a full-time Rural Mail Carrier from 1993 until June 4, 2007, the effective date of his discharge from the employment. Mr. Beck was assigned to the Waterloo Post Office.

On February 12, 2007, Mr. Beck caused a motor vehicle accident while he was on his mail route. Mr. Beck was operating his own vehicle. Mr. Beck was operating the vehicle from the front, right passenger seat, though the vehicle controls were on the left side of the vehicle. Mr. Beck used his left hand and left foot to reach across to the driver's side of the vehicle and operate the vehicle. Mr. Beck operated the vehicle this way so that he could reach out the passenger window to deliver mail. Mr. Beck's mail bundles were in the middle of the front seat and prevented him from sliding back across to the normal driver's position between mail delivery stops. Mr. Beck ordinarily delivered mail in a vehicle that was equipped with a right-side steering wheel and right-side foot pedals. Mr. Beck was not driving his primary mail delivery vehicle at the time of the accident.

Mr. Beck was in between delivery stops at the time of the accident. The accident occurred at the intersection of a gravel road and a hard surface road. Motorists on the hard surface road

had the right of way and motorists on the gravel road encountered a stop sign. Mr. Beck has made a mail delivery one-half mile before the intersection. Mr. Beck's next delivery stop was one-quarter mile beyond the intersection. Mr. Beck traveled on the gravel road at 35 miles per hour. Mr. Beck attempted to slow his vehicle as he approached the stop sign. The gravel road was partially covered by ice and snow. Mr. Beck's vehicle slid through the stop sign and collided with the rear passenger corner of a pickup truck that had been traveling on the hard surface road. The collision resulted in the pickup truck being flipped. The driver of the pickup truck was thrown from the truck. The passenger in the pickup truck was thrown from the front seat into the back seat, extended cab area. None of the people involved in the collision was wearing a seat belt.

Mr. Beck's car came to a stop in the middle of the hard surface road. Mr. Beck called 911 and attempted to aid the other motorists. Mr. Beck remained at the scene as paramedics and law enforcement arrived. Mr. Beck spent several minutes attempting to get through to the Waterloo Post Office. When Mr. Beck got through to the Post Office, he reported to Acting Supervisor Kevin Kucera that he had been in an accident, that he needed to go to the hospital, and that he needed someone to come to the scene to collect the mail from his vehicle. Within an hour of the accident, Postal Service Customer Service Supervisor Joseph Arthur went to the accident scene to investigate and document the collision. A Deputy Sheriff interviewed Mr. Beck at the scene. All of the motorists were transported to the Covenant Medical Center Emergency Room in Waterloo. The husband and wife from the other vehicle had injuries that required admission to the hospital. Mr. Beck was treated and released.

Once Mr. Beck was released from the hospital, he went to the tow lot to make certain the Postal Service had taken its mail and equipment from the car. Mr. Beck saw that a Postal Service scanner was still in the car. Mr. Beck took the scanner to the Postal Service.

The Deputy Sheriff drafted an accident report that indicated Mr. Beck was at fault for the accident. The Deputy Sheriff cited Mr. Beck for failing to obey the stop sign and for failing to have proof of insurance in his vehicle. Mr. Beck has insurance, but the insurance card was in Mr. Beck's other car.

Mr. Beck was off work on February 13, 2007, and returned to work on February 14. At that time, Supervisor Joseph Arthur told Mr. Beck that he would be placed on paid administrative leave pending completion of the Postal Service's accident investigation. Mr. Arthur told Mr. Beck that he intended to recommend that he be discharged from the employment. On February 15, Mr. Arthur reviewed the Deputy's accident report.

On February 20, 2007, Mr. Arthur interviewed Mr. Beck about the accident. A union representative was present. The employer notified Mr. Beck that it would be recommending his discharge from the employment. On February 20, 2007, Postmaster Gregory Barnes drafted a Disciplinary Action Proposal that recommended Mr. Beck's removal from the employment.

On March 12, 2007, Supervisor Joseph Arthur presented Mr. Beck with a Notice of Proposed Removal. The Notice was dated March 8. The Notice informed Mr. Beck that the employer intended to discharge him no sooner than 30 days of his receipt of the Notice. The Notice informed Mr. Beck of his right to appeal the proposed discharge under the terms of the collective bargaining agreement. The employer cited Mr. Beck's failure to perform his duties in a safe manner and in compliance with the law as the bases for the proposed discharge. The Notice referenced a December 20, 2006 reprimand for unsafe driving. That reprimand had been based on a November 12, 2006 incident where Mr. Beck was backing his vehicle in a

parking lot and his shoelace got caught on the accelerator pedal. The incident did not involve injury or property damage. The employer had imposed a seven-day disciplinary suspension.

On March 19, 2007, Mr. Beck filed his appeal of the Notice of Proposed Removal. In the appeal, Mr. Beck explained the circumstances that led to him using the car in question on February 12. Mr. Beck detailed the events leading to the accident and the events of the accident.

On April 11, Mr. Beck received a letter that said he was no longer on paid administrative leave. In response to receiving this letter, Mr. Beck established a claim for unemployment insurance benefits that was effective April 22, 2007.

On May 29, 2007, Bradley Schetzle, Senior Manager for Post Office Operations in Des Moines, sent Mr. Beck a Letter of Decision. The Letter of Decision affirmed the March 8 Notice of Proposed Removal and denied Mr. Beck's March 19 appeal. Mr. Schetzle notified Mr. Beck that his removal would be effective June 4, 2007. Mr. Beck received the Letter of Decision on May 30, 2007.

On June 4, Mr. Beck received a letter from the Postal Service that said he would receive pay for the period of April 11 through June 4, 2007. Mr. Beck received the back pay in October 2007 and contacted Workforce Development to report an overpayment of benefits for April 22 through June 4, 2007.

#### **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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence indicates that Mr. Beck operated his car in a careless and negligent fashion on February 12, 2007. Mr. Beck's Postal Carrier duties did not authorize him to operate a motor vehicle in an unsafe manner on a public roadway, especially considering the weather conditions that existed on February 12, 2007. The evidence does not establish that Mr. Beck intentionally set out to violate Postal Service rules or intentionally set out to violate the law on February 12, 2007. The evidence indicates that the employer promptly notified Mr. Beck that it intended to see his removal from the employment.

Because the February 12, 2007, incident involved carelessness and negligence, rather than an intent to violate Postal Service rules and/or an intent to violate the law, the question becomes whether there was a pattern of negligence/carelessness so recurrent as to exhibit a willful or wanton disregard of the interests of the employer. See 871 IAC 24.32(1)(a). The evidence indicates that Mr. Beck was careless on November 12, 2006 when he failed to secure his shoe laces so they would not interfere with the operation of his vehicle. These two incidents of carelessness/negligence do not constitute a pattern of carelessness/negligence so recurrent as to indicate willful or wanton disregard of the interests of the employer. Accordingly, the evidence fails to establish misconduct in connection with the employment that would disqualify Mr. Beck for unemployment insurance benefits. Mr. Beck is eligible for benefits, provided he satisfies all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Beck.

**DECISION:**

The Agency representative's May 15, 2008, reference 02 decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs