

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 06A-UCFE-00014-LT
OC: 03-12-06 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**BENJAMIN I GIADOM
APT 11
2400 HICKMAN RD
DES MOINES IA 50310**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318**

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct/Requalification
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 4, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2006. Claimant participated. Employer participated through Tina Goodale and Mike Dickerson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time casual mail handler through August 20, 2005, when he was discharged after returning late from break. Bob Burke, supervisor on Tour 1, decided to fire claimant but did not participate in the hearing but wrote an e-mail to Goodale, supervisor, Tour 3, and Dickerson, manager, Tour 3. Goodale verbally warned claimant sometime in July 2005

about wearing proper identification, that he must take only 15-minute breaks, and must report to work on time. There were no written warnings his job was in jeopardy.

The claimant has requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for reasons related to job 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Neither party bears much credibility, however, claimant admitted being tardy from break on his last day of work and while he denies being warned about tardiness or any instances of tardiness before that, his recollection is at odds with Goodale and other supervisors who reported to Dickerson. Thus, the administrative law judge concludes claimant was discharged due to excessive unexcused tardiness, which is considered job-related misconduct. However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed.

20 CFR 609.14 provides:

(a) State entitlement. Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) Payment. Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) Certification by the Department. The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this part.

(d) Use of money. Money paid a State under the Act and this part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to states under the Act and this part may be made.

Because the US Postal Service is a federal employer, its account may not be relieved of benefit charges.

DECISION:

The April 4, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer cannot be relieved from charges.

dml/kkf