

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DYLAN T ROGERS
Claimant

APPEAL NO: 11A-UI-13882-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 09/18/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 11, 2011 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing with his witness, Alano De La Rosa, a union steward. Dan Kelly, a sort manager, and Ted Ramsey, a security guard, appeared on the employer's behalf. During the hearing, Employer Exhibit One and Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 June 2008. He worked part-time as a loader on the twilight shift. The claimant understood that if a customer's package broke open, the contents of the package were to be put in a tote box and set aside. If the employer could repackage the contents the package would be rewrapped. Employees could not use, borrow, or take anything that came from a customer's package or in a tote box.

On September 8, Galiena Cook noticed some packages had broken open and asked for a tote box to put the contents of the broken package(s) into. (Claimant Exhibit A.) When Cook held up a pair of pink gloves from the broken package(s) and told John Dunagan the gloves would look good on him, he told her to put the gloves in a tote box with the other over goods. Dunagan saw Cook put the gloves in a tote box. (Claimant Exhibit B.) There were multiple pairs of pink gloves that came from a customer's package(s). Cook put some of the gloves in a Maurice's tote and she threw one pair down on the grating in front of the load. (Employer Exhibit One.)

Cook made a comment to Dunagan, the claimant, and Nate Porter that real men wear pink. At some point Cook handed a pair of pink gloves to the claimant. He put them on and wore them

while he was working about five minutes. He kept the pink gloves on when he went on a break for ten minutes. The claimant had assumed the gloves were Cook's when he put them on. During break, the claimant and others made jokes about the pink gloves.

After Dunagan learned the claimant was wearing pink gloves, Dunagan noticed gloves were not in a tote. (Claimant Exhibit B.) McVey told Kelly that the claimant had been wearing pink gloves that were over goods.

Kelly called the claimant to his office. In addition to Kelly and the claimant, Ramsey and De La Rosa witnessed the office conversation. Kelly asked the claimant where he got the pink gloves that he was still wearing. The claimant told Kelly he had gotten the gloves from Cook. After Kelly responded by saying, "No, no they came from a box," the claimant said that they may have come from a box, but he did not know this, because Cook gave him the gloves. Kelly did not believe the claimant and discharged him for theft – taking a customer's property, the pink gloves.

The claimant grieved his termination. The grievance committee upheld his termination.

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. 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 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).

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 evidence establishes that when Kelly talked to the claimant in his office, he had already decided the claimant took the pink gloves out of a tote box that contained over goods. If the claimant took the gloves from the tote box, he committed work-connected misconduct. If, Cook gave him the gloves and he believed they were hers, the claimant did not commit work-connected misconduct. Cook, who could have resolved the conflict in testimony, did not testify at the hearing. Based on the evidence presented during the hearing, the employer did not establish by a preponderance of the evidence that the claimant took the gloves out of the tote box. As a result, he did not commit work-connected misconduct.

The fact the grievance committee upheld the claimant's termination does not control the outcome of this case, since an employer has the right to discharge a claimant for business

reasons. The facts that justify a termination may not constitute work-connected misconduct for unemployment insurance purposes.

DECISION:

The representative's October 11, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of September 18, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw