

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILIP B WILSON**

Claimant

**APPEAL NO: 13A-UI-13504-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**

Employer

**OC: 11/03/13**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

United Parcel Service (employer) appealed a representative's December 2, 2013 decision (reference 01) that concluded Philip B. Wilson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on January 2, 2014. The claimant participated in the hearing. Jeff Teel appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on September 4, 2012. He worked part time (20 – 25 hours per week) as a loader/package handler at the employer's Des Moines, Iowa facility, working on a schedule from 11:15 p.m. to about 3:30 a.m., Sunday through Thursday. His last day of work was the shift from the evening of October 30 into the morning of October 31, 2013. The employer suspended him at that time and discharged him on November 4, 2013. The stated reason for the discharge was threatening behavior in violation of the employer's policy against violence in the workplace.

At about 12:45 a.m. during the final shift, claimant and one of his supervisors "exchanged words" regarding some work performance issues; in that conversation the claimant made some "hypothetical" statements about resolving the matter by "using our hands instead of talking." At about 2:00 a.m., another supervisor, who was aware of the prior incident with the other supervisor, overheard the claimant talking to other employees about the situation; he

understood the claimant to say he wanted to “go on a rampage” on all the supervisor and make them leave with shirts turned red with blood. The claimant acknowledged that he had a disagreement with the first supervisor about a work performance issue and acknowledged that there had been hypothetical conversation about things that “could happen” but that he was referring to a different context. He denied saying that he wanted to turn the supervisors’ shirts red with blood, and asserted that he had only said something about persons wearing red shirts such as he was wearing, and that his statement was misheard or misinterpreted.

Regardless of what was actually said, the second supervisor was sufficiently concerned by what he believed that he heard that he reported the matter to Teel, the night sort business manager, when he reported in at around 3:00 a.m. Teel then met with the claimant. The claimant became very agitated during the discussion with Teel, raising his voice and continually interrupting Teel. While he denied he had made the supposed statement regarding giving supervisors “bloody shirts,” he stated that he did not care if he had to “take a supervisor out” to get some respect, and that where he was from “we handle things with our fists.” As a result of the conduct with Teel, which led further credence to the reports made by the supervisors, the employer determined to suspend and then discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective November 3, 2013. The claimant has not received any unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's threatening language and demeanor toward Teel, which was consistent with the earlier conduct as reported by the two supervisors, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties

and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's December 2, 2013 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 3, 2013. This disqualification continues until the claimant 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.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css