

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT BRANDMEYER**  
Claimant

**APPEAL NO. 10A-UI-15375-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 09-12-10**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 3, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 20, 2010. The claimant participated in the hearing. Jeff Aukes, Manager; Mike Barger, Fuel Station Manager; Tessa Hauschildt, Fuel Station Clerk; Jerry Ticknor, Fuel Station Assistant Manager; and Dan Speir, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fuel clerk for Hy-Vee from October 28, 2009 to September 14, 2010. He was discharged for violating the social media policy, which he signed for June 5, 2010. The social media policy prohibits placing Hy-Vee in a bad light or speaking on behalf of Hy-Vee. Use of a social media website during work hours is also prohibited. Violation of this or any other policy can result in disciplinary action, up to and including termination. The claimant was discharged for violation of the social media policy after he wrote a post on Facebook showing the employer in a bad light. On September 12, 2010, the claimant posted the following: "I hate my fucking job and I hate the two-faced back stabbing idiots I work with. So starting this week it's time to look for a new job. I'm too old for this high school drama bullshit." Another person asked the claimant what happened and he said, "Someone called our fat lazy assistant manager and told him I was texting and reading the paper but I'm tired of their high school drama bullshit so I'm going to go to Val about it because this bullshit needs to stop or I'm gonna go off on all these assholes I work with." The claimant was next scheduled to work September 14, 2010, and he reported to work late and not wearing work attire. The manager asked the claimant if he understood the social media policy and the claimant indicated he understood everything. The manager showed him a copy of what he posted and the claimant

merely said that he could take it off but never denied writing the post. The manager told the claimant he had made his choice and the employer had made its choice. The claimant was told he was terminated but he refused to sign the termination form. He got up and started yelling profanities. He yelled that he hated all the managers and they could all “fuck off.”

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

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

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 claimant was discharged for violating the employer's social media policy after he posted inappropriate comments that put the employer in a bad light. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment

insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). This case would also be applicable to posting offensive comments about the employer on a social networking site. The claimant's conduct shows a willful 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. Consequently, the administrative law judge concludes the employer has established work-connected misconduct as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 3, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw