

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN J WATKINS
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-13205-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 25, 2015, (reference 04) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2015. Claimant participated and was represented by legal assistant John Graupmann. Employer participated through human resource manager Wanette Moore, assistant managers of perishables John Patton and Brad Gerber. Employer's Exhibits 1 through 3, 5 through 8, and 11 through 13 were received. Employer's Exhibit 4, 9 and 10 were not relevant and not received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a kitchen clerk from August 25, 1997, and was separated from employment on November 4, 2015, when she was discharged. On that day Gerber accompanied outside contract audit food safety inspector Rick Jennings who noticed claimant had placed a cup of water on top of the ice machine. Gerber told claimant she was not allowed to leave her cup of water there. The employer must avoid potential food contamination, which includes the ice machine. Claimant told him, "I don't care. I work my ass off all day." When he returned later the cup was still on the ice machine. Gerber considered this conduct unbecoming of an employee. Exceptions to the food safety rules are not made for an employee who opts not to take breaks and walk to the designated drinking water station. Claimant had been warned about failure to follow instruction, negative attitude towards managers and coworkers. On November 10, 2014, she was warned not to collect recycling while on the clock as it was not part of her job duties. (Employer's Exhibit 5) On November 12, 2014, she received a consultation form indicating complaints about her attitude towards other employees. She refused to sign but was given a copy. (Employer's Exhibit 6) On December 1, 2014, claimant was flippant towards Amber former assistant manager of perishables when confronted about doing personal tasks on the clock (gathering and taking recyclables home). She was warned

she would be terminated if she failed to follow direction or was disrespectful of management again. (Employer's Exhibit 8) On November 14, 2014, contrary to the November 10 warning, claimant recycled on the clock, and was suspended by Jodee Hitchcock. (Employer's Exhibit 7)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Since others have also been warned for similar conduct, disparate application of the policy is not evident. The employer has presented substantial and credible evidence that

claimant was insubordinate by failure to remove the cup and her response to Gerber after having been warned about past similar insubordinate acts. This is disqualifying misconduct.

DECISION:

The November 25, 2015, (reference 04) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css