

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEMETRIA A GRADY
Claimant

APPEAL NO. 14A-UI-03626-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/16/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Demetria Grady filed a timely appeal from a representative's decision dated April 2, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 24, 2014. Claimant participated. The employer participated by Mr. Bruce Burgess, Hearing Representative, and witnesses: Ms. Traci McKoon, Human Resource Manager, and Ms. Savanna Jones, Assistant Manager. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Demetria Grady was employed by Hy-Vee, Inc. from February 14, 2006 until March 12, 2014 when she was discharged from employment. Ms. Grady was employed as a part-time customer service clerk and was paid by the hour.

Ms. Grady was discharged because of an incident that had taken place on March 12, 2014 at the Hy-Vee store where she was employed. On that date, Ms. Grady was confronted by an angry and disruptive female customer who, for no apparent reason, directed vile, inappropriate and racial comments to Ms. Grady. Ms. Grady initially attempted to placate the angry customer by suggesting that another customer service clerk would soon wait on the customer. Although Ms. Grady had ignored the claimant's vile statements and racial epithets and had tried to diffuse the customer's anger, the customer continued to berate Ms. Grady using the same inappropriate language. When the customer for the second time, touched Ms. Grady's face while pointing at Ms. Grady, Ms. Grady came out from behind the counter and challenged the customer to "say it again!" (referring to a racial epithet). Ms. Grady then struck the disruptive customer and Ms. Grady and the customer went to the ground fighting.

The melee between Ms. Grady and the customer was observed by Ms. Jones who had been summoned by the other customer service clerk to the incident. A number of individuals were required to separate the parties. Ms. Grady was taken to the company office and then sent home pending a decision in the matter.

On January 22, 2014, the claimant had been issued a written warning by Hy-Vee, Inc. after the claimant and a representative of Ms. Grady's landlord had been involved in a loud and angry confrontation in the workplace. Ms. Grady had been specifically warned at that time to remove herself from confrontation with other individuals in the store and to notify a manager if a disruptive situation was occurring. The employer concluded that although Ms. Grady had been explicitly confronted by the customer and that the customer had used vile and inappropriate language, that the claimant nonetheless should have retreated from the situation and called management instead of arguing and engaging in a physical altercation with the customer. The employer concluded that the claimant had sufficient time to remove herself and to call management, because the other worker who was standing next to Ms. Grady was able to call a manager and that the manager had arrived before the confrontation had escalated into a physical fight.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, Ms. Grady was discharged after she entered into a physical altercation with an unruly customer who had directed inappropriate language towards Ms. Grady. The claimant had previously been in a similar situation where an argument between Ms. Grady and a store visitor had escalated into a yelling match in the store in the presence of customers. The claimant at that time, had been specifically warned not to engage in that type of conduct in the future and she was instructed to remove herself from a situation of that nature and to call a manager if a situation of that nature occurred again.

While it is understandable that the claimant would be upset based upon the vile and inappropriate statements and racial epithets that were hurled at her for no apparent reason by the customer, the claimant did have reasonable alternatives that were available to her in the work setting. The claimant had the option of remaining behind the counter and calling a manager, as another employee who was working next to Ms. Grady did. The claimant instead came out from behind the counter, challenged the customer and then engaged in hitting the customer resulting in a full-fledged fight between Ms. Grady and the customer. Although the administrative law judge is sympathetic to the claimant's situation, the administrative law judge concludes that reasonable alternatives were available to the claimant and that the claimant had been specifically warned to use alternative methods and not to engage in arguing and/or fighting in the workplace.

The employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and she is otherwise eligible.

DECISION:

The representative's decision dated April 2, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs