

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEORGE SHAROAIN**  
Claimant

**APPEAL NO: 12A-UI-01716-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/01/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

George Sharoain (claimant) appealed an unemployment insurance decision dated February 8, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2012. The claimant participated in the hearing. The employer participated through Ray Doughan, Perishable Manager; Cathy Norgard, Human Resources Manager; Patrick Dwyer, Night Stock Manager; Dan Kloft, Assistant Manager; and Employer Representative Pamela Kiel. Employer's Exhibits One and Two were admitted 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:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time night stock crew from March 16, 2000 through November 15, 2011 when he was discharged for insubordination which is a zero-tolerance policy. He reported to work at approximately 9:00 p.m. on November 11, 2011 and Night Stock Manager Patrick Dwyer believed the claimant was "partially intoxicated, or hung over, or tired, or all three." Mr. Dwyer issued the claimant a simple directive to get a cart and a plastic bag but the claimant refused. He argued with his supervisor and eventually began yelling and using profanity. When the claimant's insubordination continued, Mr. Dwyer made the decision to send the claimant home so he called Assistant Manager Dan Kloft.

The claimant was taken into the back room and told he had to clock out. Initially he acted as if he did not know what he had done but he again became angry and repeatedly yelled, "Fuck you." During the hearing, the claimant admitting yelling at his boss and admitted using the "F" word once but denied using it more. Mr. Dwyer and Mr. Kloft both testified that he used it

repeatedly and also directed it toward Mr. Kloft. The claimant yelled all the way out the door; he said he wanted a meeting and also said, "Pat you fucking prick!"

Less than an hour after that, the claimant called Mr. Dwyer and started in again. He told Mr. Dwyer while Mr. Kloft was listening that he was "gonna get him" and was "gonna crawl up his ass." The claimant then continued with the "fuck you" comment until Mr. Dwyer disconnected. Mr. Dwyer subsequently contacted the police to report the claimant's conduct and the employer discharged him on November 15, 2011.

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

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

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.

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 on November 15, 2011 for insubordination. While he denies he was insubordinate, he does admit he yelled at his boss and used profanity towards him. 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). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated February 8, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css