

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDE M ALBAUGH
Claimant

APPEAL NO: 13A-UI-06273-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/21/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 22, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her witness, Tiffany Albaugh. Pamela Kiel, represented the employer. Matt Fast, the manager of store operations, and Estela Ebner, the personnel manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted was evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. She worked part time, 20 to 25 hours a week, as a field station clerk. In mid-April 2012, the claimant received a copy of the employer's code of conduct. The code of conduct informs employees they can be discharged if they verbally abuse or threaten a co-worker.

The claimant, B.S., and L. were initially friends at work. Later, they brought personal issues to work and started "back stabbing" each other. (Employer Exhibit One.) Problems between the three women became so bad the employer had a store meeting to remind them to keep personal issues outside of the workplace and to treat each other and others courteously and professionally. The claimant stopped talking to B.S. and L. at work.

On December 28, 2012, the employer gave the claimant a written warning after a customer complained about the way the claimant talked to him. The customer felt the claimant was disrespectful and rude to him. (Employer Exhibit Two.)

On April 16, 2013, when the claimant came to work she turned off the radio that B.S. had been listening to. The claimant also turned on an air conditioner. The claimant wore a jacket at work, but B.S. got very cold after the claimant turned on the air conditioner. On April 17, B.S. told Ebner that the claimant said she would get B.S. in trouble so B.S. would lose her job. The employer considered the comment B.S. reported as a threat.

On April 19, the employer informed the claimant she was not needed anymore. The employer did not give her a reason for discharging her then. The employer discharged the claimant for continuing conduct that violated the employer's Code of Conduct. The employer considered the December staff meeting as the claimant's verbal warning and the December 28 written warning as her second warning for rude and disrespectful conduct. The employer follows the three-strikes you are out policy. The employer considered B.S.'s complaint that the claimant was going to get her fired as the claimant's third strike. The employer did not ask the claimant about her version of B.S.'s complaint.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant; B.S. and L. had been friends and then had a falling out and did not get along. The employer tried to address issues they had at work in a mid-December 2012 staff meeting. The claimant did not recognize the staff meeting as a verbal warning directed toward the claimant. The claimant understood she received a written warning for the way she talked to a customer on December 28, 2012. The claimant did not understand her job was in jeopardy after receiving the December written warning.

None of the three employees reported any major problems until April 17, 2013. The claimant avoided problems by not talking to B.S. or L. at work. On April 16, the claimant turned off a radio that B.S. had been listening to when she came to work. The claimant also turned on the

air conditioner that made B.S. very cold. B.S. reported that the claimant was again doing things and indicated she would make B.S. lose her job. The employer took B.S. at her word and did not ask the claimant about B.S.'s report.

While the claimant's conduct of turning off a radio and turning on an air conditioner may have been less than professional, the credible evidence does not establish that the claimant threatened B.S. The claimant may have had legitimate reasons for turning off the radio and turning on the air conditions. The employer did not ask the claimant for any explanation before discharging her. On April 19, 2013, the employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 22, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs