

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ADAM C BEADLE
Claimant

APPEAL NO. 18A-UI-11740-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/04/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Adam Beadle (claimant) appealed a representative's November 27, 2018, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 20, 2018. The claimant participated personally. The employer provided a telephone number for the hearing. The administrative law judge called the employer's representative. She indicated that the employer's only witness was not available because he was taking his child to school. The employer did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired in March 2018, and at the end of his employment he was working as a part-time delicatessen clerk. The claimant signed for receipt of the employer's handbook when he was hired.

The employer talked to the claimant in the summer of 2018, about going to the bathroom without notice to his manager. The claimant told the employer this never happened. The employer also talked to the claimant about leaving the meat line without notice to his manager. The claimant explained he left the meat line to help customers. The employer documented the discussion on paper but did not warn the claimant of termination.

On or about November 7, 2018, a customer came to the delicatessen counter and asked for honey turkey. The customer pointed at the tray with honey garlic turkey and honey pepper turkey. He was asking for one product and pointing to something else. The claimant discussed the product the customer was asking for and the availability in the Hy-Vee brand as opposed to the Di Lusso brand products. The claimant tried to direct the customer to another area where the honey turkey was located. The customer continued to point at the honey garlic and honey

pepper turkey tray. He said he wanted that. The claimant asked the customer if he wanted honey garlic turkey or honey pepper turkey. The customer became belligerent, said, "Go to hell", and walked into the Health Market area. The claimant and the customer's family waited. The customer returned. He told the claimant he was disrespectful, had a bad attitude, and was going to complain. The claimant told the customer he was sorry and encouraged him to speak with his manager. At least one co-worker saw the interaction.

On November 8, 2018, the store manager called the claimant in for a meeting. The store manager had prepared a termination form. The employer terminated the claimant because the customer complained.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 27, 2018, decision (reference 05) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs