

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHAEL D HOGAN  
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CARROLL IA 51401-1946

HY-VEE INC  
c/o TALX UCM SERVICES  
PO BOX 66864  
ST LOUIS MO 63166-6864

TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 06A-UI-07590-HT  
OC: 07/02/06 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Hy Vee, filed an appeal from a decision dated July 20, 2006, reference 01. The decision allowed benefits to the claimant, Michael Hogan. After due notice was issued a hearing was held by telephone conference call on August 14, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Store Director Randy Kruse, Manager of General Merchandise Jon Johnson. The employer was represented by TALX in the person of David Williams. Human Resources Coordinator Randi Powell observed the proceedings but did not offer testimony.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael Hogan was employed by Hy-Vee from May 21, 2004 until June 23, 2006. He was a part-time bakery clerk.

During the week of June 5, 2006, the claimant was pushing a bakery rack from the back room out to the sales floor. He was not watching where he was going and knocked down an elderly customer. Manager of General Merchandise Jon Johnson notified Store Director Randy Kruse, who was on vacation. The next week, when he returned from vacation, Mr. Kruse informally counseled Mr. Hogan, admonishing him that he needed to pay more attention to what he was doing and that his carelessness must stop. Mr. Hogan was upset, insisting it was not his fault.

On June 23, 2006, Mr. Kruse passed Mr. Hogan on the sales floor and said, "Good morning," to him. The claimant did not respond and walked past. The store director again said, "Good morning," to which the claimant responded, "I refuse to speak to you." Mr. Kruse asked him if that was "how it was going to be" from then on and the claimant again said, "I refuse to speak to you."

Mr. Kruse went to his office where he consulted with Mr. Johnson, and then summoned the claimant to a meeting. He emphasized to the claimant that Hy Vee depended on all associates communicating with each other and asked him again if he did not intend to speak to the store director in the future. Mr. Hogan confirmed that he refused to speak to Mr. Kruse. At that point the store director told him he could not conduct business that way and if that was the way the claimant felt, there was no purpose for him to be employed. The claimant again confirmed he did not intend to speak with the store director and then was dismissed.

Michael Hogan filed a claim for unemployment benefits with an effective date of July 2, 2006. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for insolence and insubordination to a supervisor. He apparently did not feel the counseling he received from the store director the week before was warranted, but this does not mean he may deal with the issue by refusing to observe professionalism and simple courtesies within the work place. The employer was not expecting the two of them to be bosom friends or to socialize outside of work, only for Mr. Hogan to conduct himself in a manner conducive to a productive and professional work environment.

The claimant was counseled and knew the employer's expectations as far as communication between associates in the work place. He refused to comply with the reasonable instructions of his supervisor, even though he knew the consequences. Mr. Hogan's decision to remain obstinate and sullen was his choice to make even though he knew he could be discharged. This is conduct not in the best interests of the employer and the claimant is disqualified.

#### DECISION:

The representative's decision of July 20, 2006, reference 01, is reversed. Michael Hogan is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/pjs