

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROCHELLE J ENGLE**  
Claimant

**APPEAL NO. 09A-UI-19191-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 11/15/09  
Claimant: Respondent (1)**

Section 96.5-2 a- Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 11, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on February 3, 2010. The claimant participated in the hearing. Tim Speir, a representative with Unemployment Insurance Services, appeared on the employer's behalf. Randy Menke, the store director, and Brenda Barton, the bakery manager, appeared on the employer's behalf. 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:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on August 3, 2006. The claimant worked as a part-time bakery clerk.

In late October the claimant was very upset after she learned she had not gotten a bakery job she had recently applied for. The claimant was so upset she went to a back room. Another employee went to console her. Barton was not a work, but someone called her and reported the claimant was very angry after she learned she had not gotten a position. The employee also reported the claimant was told at least three times to leave because she was so upset and said she would not play second fiddle to anyone. Barton understood the claimant made a comment about getting even with Menke. Barton did not talk to the claimant about any comments she made after she learned she had not gotten a position in the bakery she had wanted.

In early November, Barton had lunch with the claimant. This was very difficult time for the claimant. She had recently lost custody of her child and was depressed. The claimant was already seeking professional help for her depression. When Barton asked the claimant how

things were going for her, the claimant told her not well and she would not be responsible for him missing. When Barton asked what the claimant meant, she understood the claimant's current husband would do something to her ex-husband. The claimant does not recall making such a statement.

On November 12, Menke told the claimant he had received information that she made a comment about getting even with him. The claimant denied making such a statement. When the claimant left Menke's office, local police officers were waiting for her and asked her to go with them. The police received a report that the claimant had made threatening comments directed toward her ex-husband. After talking to the claimant and her ex-husband, the police allowed the claimant to go home.

Later that day, Menke called the claimant and told her she did not need to come back to work because the employer wanted more information from the police about what was going on. The claimant's husband called Menke a short time later and asked if the claimant was discharged. Menke told him yes. The employer discharged the claimant after concluding she threatened Menke and indicated her ex-husband would end up missing. The employer considered the claimant's conduct a violation of the employer's code of conduct or conduct unbecoming of an employee.

#### **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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant had any intention or had even made a comment that she would get even with Menke when she did not get hired for a position in the bakery department she had wanted. The employer's reliance on Barton's hearsay evidence about this comment cannot be given as much weight as the claimant's testimony.

The claimant was understandably upset about the personal issues she was going through in late October and early November. When the claimant talked to Barton in early November about her personal life, she was distraught and upset. When a person is upset, she may want or wish another person to go missing, but the evidence indicates this was only talk. The claimant may have been mentally unstable at the time, but she was taking reasonable steps by seeking

professional help to work out her personal problems. Given the claimant's apparent mental instability at the time, the employer was justified in being concerned and also suspending or putting her on a temporary leave. The evidence does not, however, establish that the claimant intentionally disregarded the employer's interests. In early November the claimant was not always cognizant of what she said. The claimant's comments as reported to Menke do not rise constitute work-connected misconduct. As of November 15, 2009, the claimant is qualified to receive benefits, because she did not commit work-connected misconduct.

**DECISION:**

The representative's December 11, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. These reasons do not, however, constitute work-connected misconduct. As of November 15, 2009, 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/kjw