

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEINBECK, SCOTT, L
Claimant

APPEAL NO. 12A-UI-09577-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/01/12
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Scott Steinbeck filed a timely appeal from the July 23, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 18, 2012. Mr. Steinbeck participated. Alice Rose Thatch of Corporate Cost Control represented the employer and presented testimony through Carl Haidar, Travis Eckerson, and Phil Munoz. Exhibits 1 through 28, A and B were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott Steinbeck was employed by Hy-Vee in Spencer as a full-time Kitchen Manager until June 28, 2012, when Carl Haidar, Store Director, discharged him for insubordination and failure to generate satisfactory sales revenue. At the time of Mr. Steinbeck's discharge, Mr. Haidar had been the Spencer Store Director for a year and a half. Mr. Steinbeck had been the Kitchen Manager at the Spencer Hy-Vee for ten years and had been employed with Hy-Vee since 1998. During the last several weeks of Mr. Steinbeck's employment, Mr. Steinbeck's immediate supervisor was Travis Eckerson, Manager of Perishables. Prior to that, Phil Munoz had been the Manager of Perishables and had been Mr. Steinbeck's immediate supervisor for a year and a half. In May 2012, Mr. Munoz was promoted to Manager of Store Operations.

On April 30, 2012, Mr. Haidar and Mr. Eckerson met with Mr. Steinbeck to discuss multiple concerns they had about his work performance. Mr. Haidar had prepared a disciplinary memo for Mr. Steinbeck to sign. The memo indicated that Mr. Steinbeck needed to cooperate with other managers and cease being adversarial with other managers, refrain from negative comments or demeanor when interacting with other employees, adhere to the posted schedule once Mr. Steinbeck wrote it, work at least 50 hours per week, and complete duties as assigned or advise supervisors in advance if that was not possible to complete duties. The memo indicated that the employer wanted Mr. Steinbeck and the store to succeed, but that if the

employer did not seek improvement by the end of the quarter, Mr. Steinbeck was in jeopardy of being discharged from the employment. Mr. Steinbeck refused to sign the memo, but was provided with a copy.

Mr. Steinbeck perceived subsequent interactions with Mr. Haidar as harassment. In mid-June, Mr. Steinbeck contacted Hy-Vee's corporate office to report that he was being harassed by Mr. Haidar. Mr. Steinbeck thought the employer was harassing him by monitoring his work hours, commenting on workplace injury data, and by removing responsibilities in areas where Mr. Steinbeck was underperforming. On June 28, 2012, Chris O'Hannon, Area Human Resources Supervisor, was at the Spencer store. Mr. O'Hannon notified Mr. Steinbeck that he had completed the investigation into the alleged harassment and had found all allegations to be unfounded. Mr. Steinbeck responded by telling Mr. O'Hannon loudly to go to hell. Mr. Eckerson and others overheard the comment. The employer summoned law enforcement to the Spencer store, discharged Mr. Steinbeck from the employment, and had Mr. Steinbeck escorted from the store.

Mr. Steinbeck had earned a reputation for being subject to mood swings, for negativity, and for angry outbursts. Mr. Steinbeck's supervisors felt intimidated by Mr. Steinbeck and did not want to confront Mr. Steinbeck. Mr. Steinbeck openly defied directives uttered by the supervisors. On multiple occasions when Mr. Munoz and Mr. Eckerson told Mr. Steinbeck that he needed to make tortilla chips or perform other kitchen department tasks, Mr. Steinbeck would say he was too busy and that the supervisor would have to do it themselves. Mr. Steinbeck threw a fit when a corporate kitchen supervisor met with Mr. Munoz, but did not meet also with Mr. Steinbeck. On that occasion, Mr. Steinbeck threw items in the kitchen and stormed off. Mr. Steinbeck openly contradicted directives that Mr. Munoz gave to kitchen employees in Mr. Steinbeck's presence. These included directives that employees wear gloves and hats to satisfy food safety regulations, and directives that employees comply with Hy-Vee standard operating procedures.

Between the April 30, 2012 meeting and the June 28, 2012 discharge, Mr. Eckerson kept a log of instances wherein he had directed Mr. Steinbeck to perform specific duties and Mr. Steinbeck had failed to follow through. On the morning of May 14, Mr. Eckerson directed Mr. Steinbeck to fill the pizza display because it was down to seven pizzas after Mr. Eckerson pulled those that were out of date. It was standard procedure to stock 30 pizzas in the pizza display. Mr. Steinbeck told Mr. Eckerson he would fill the pizza display by the end of the day. Mr. Eckerson checked the next morning and the pizza display had not been stocked. Instead the display was down to three pizzas. On the morning of May 28, Mr. Eckerson directed Mr. Steinbeck to fill the pizza display because it was down to five pizzas after Mr. Eckerson removed those that were out of date. Mr. Steinbeck said he would take care of it by the end of the day. On May 29, the work had not been performed and the display was down to two pizzas. Since Mr. Steinbeck was not at work on May 29, Mr. Eckerson assigned another employee to fill the pizza display and the work was done in a timely manner. On June 11, Mr. Eckerson directed Mr. Steinbeck to fill the pizza display because it was down to eight pizzas and needed straightening. When Mr. Eckerson checked the next day, the work had not been completed. Mr. Eckerson assigned the work to another employee, who filled and straightened the display.

On the morning of May 18, Mr. Eckerson had directed Mr. Steinbeck to stock his assigned four feet section of the frozen department and to tag some lasagna noodles in the section so that customers could purchase them. The next morning, Mr. Eckerson checked and saw that the work had not been performed. When Mr. Eckerson spoke to Mr. Steinbeck, Mr. Steinbeck said he had forgotten about the noodles, that he had catering to attend to and had gotten too busy, but that he would take care of the matter that same day. On May 21, Mr. Eckerson checked and the work had still not been performed. On June 19, when the work assigned a month

earlier had still not been performed, Mr. Eckerson removed half of the assigned frozen food section from Mr. Steinbeck's responsibilities and assigned it to other staff.

In making the decision to discharge Mr. Steinbeck from the employment, Mr. Haidar considered the decrease in quarter revenue generated by the kitchen department in 2012 when compared to the earlier year. Mr. Haidar also considered multiple occasions when Mr. Steinbeck had failed to input catering charges in a timely manner, leading to customer complaints about erroneous invoices.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether

the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

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). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984).

The weight of the evidence establishes a pattern of insubordinate behavior on the part of Mr. Steinbeck. The weight of the evidence indicates that between the meeting at the end of April and the discharge at the end of June, Mr. Steinbeck repeatedly and unreasonably refused to follow reasonable directives issued by Mr. Eckerson. The weight of the evidence does not support Mr. Steinbeck's assertion that the failure to comply with the directives to fill the pizza display was the fault of employees under Mr. Steinbeck's supervision. The evidence indicates instead that Mr. Steinbeck intentionally ignored these directives and others as part of a power struggle with Mr. Eckerson. Mr. Steinbeck had earlier engaged in similar conduct with Mr. Munoz. The evidence also does not support the assertion that Mr. Steinbeck was too busy with other duties, or too understaffed, to comply with Mr. Eckerson's directives.

The weight of the evidence indicates that Mr. Steinbeck directed offensive language at the Areas Human Resources Supervisor assigned to investigate his allegations of harassment. Mr. Steinbeck did this at a time and in a place when others could overhear the remarks. Based on the history and pattern, the employer was legitimately concerned about what Mr. Steinbeck might do next and acted reasonably in summoning law enforcement to assist with the discharge process. The conduct directed at the Area Human Resources Supervisor constituted misconduct.

The weight of the evidence indicates that the Mr. Steinbeck's pattern of conduct adversely affected the sales that could be generated by the kitchen. That conduct included repeated failure to maintain a fully stocked pizza display and the month-long failure to stock the assigned frozen food area. The conduct also included failure to promptly enter catering invoice

information. Thus, there was a pattern of negligence that factored in the decrease in sales. The pattern of negligence constituted misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Steinbeck was discharged for misconduct. Accordingly, Mr. Steinbeck is disqualified for benefits 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. The employer's account shall not be charged.

DECISION:

The Agency representative's July 23, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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