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

ROBERT M RAVELING
1508 CHOCTAW CT
SIOUX CITY IA 51104

HY-VEE INC
C/O TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283

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

Appeal Number: 05A-UI-05396-S2T
OC: 04/24/05 R: 01
Claimant: Appellant (1)

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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Raveling (claimant) appealed a representative's May 10, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Hy-Vee (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2005. The claimant participated personally. The employer was represented by David Williams, Manager of Operations, and participated by Tom Daschel, Store Director; Allen Burns, Manager of General Merchandise; Carolyn Lilly, Kitchen Worker; Rebecca Smith, Italian Express Manager; and Tracie Baldwin, Kitchen Helper. Patricia Howarth observed the hearing.

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 on July 27, 1992, and at the end of his employment was working as a full-time kitchen manager. He completed computer based training regarding the employer's no tolerance sexual harassment policy. The claimant attended weekly meetings where the employer's no tolerance sexual harassment policy was discussed.

The claimant made comments to one subordinate about her breasts, "ass" and cleavage. He appeared at her house unannounced twice. The claimant grabbed another subordinate's breasts and suggested they go to the park and masturbate in front of each other. The claimant grabbed a third subordinate's breasts and stated he wanted to be involved in a three person sexual act with her. The claimant told the third subordinate that he sat in the park across from the claimant's house and watched her and her fiancée in the bedroom. All three subordinates were afraid to report the claimant because he threatened to fire them if they told the employer.

On or about April 22, 2005, the claimant tried to get a 17-year old subordinate into the cooler. He spoke to her about "doing the nasty" with her boyfriend. The 17-year old reported the incident to the employer and said she did not want to work because of her manager's actions. The employer investigated and discovered what the claimant had said and done with the three other subordinate employees. The employer terminated the claimant on April 24, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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 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). Foul language of itself can constitute disqualifying job misconduct. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). The employer has established that the claimant did make inappropriate comments and touch female employees with the intent to sexually harass them. Sexual harassment of subordinates is contrary to the standard of behavior the employer would have a right to expect. The employer has established that the claimant was discharged for misconduct.

DECISION:

The representative's May 10, 2005 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjf