

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN KEITH A WHITFIELD
Claimant

APPEAL NO. 12A-UI-02433-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/29/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brian Keith A. Whitfield filed a timely appeal from an unemployment insurance decision dated March 2, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 27, 2012 with Store Director Chuck Irelan participating for the employer, Hy-Vee, Inc., which was represented by Sabrina Bentler. Employer Exhibit One was admitted into evidence. Although Mr. Whitfield had provided a telephone number at which he could be contacted, the number was not answered when called at the time of the hearing. There was no contact from the claimant while the hearing was in progress.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Brian Keith A. Whitfield was employed by Hy-Vee, Inc. from June 26, 2011 until he was discharged January 20, 2012. He last worked as a kitchen clerk. The final incident leading to discharge occurred January 19, 2012. Mr. Whitfield did not complete his assigned closing tasks, failing to clean shelving on which containers were stored and failing to wipe down appliances. The oncoming shift in the morning found food on the sides of the appliances. On January 18, 2012, Mr. Whitfield had shut down both fryers prematurely. As the result, he was unable to prepare an order for a customer. He did not offer any assistance to the customer who had previously ordered the meal. Mr. Whitfield had also received prior warnings for failing to complete closing tasks.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

Iowa Code § 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 evidence establishes a pattern of failure to complete assigned tasks and failure to follow store policy. Since the claimant did not participate, he presented no evidence contradicting or mitigating the employer's testimony and documents. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 2, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs