

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES E HAYSLETT**  
Claimant

**APPEAL NO. 11A-UI-04254-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/20/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Charles E. Hayslett (claimant) appealed a representative's March 28, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2011. The claimant participated in the hearing. Alice Rose Thatch of Corporate Cost Control, Inc. appeared on the employer's behalf and presented testimony from two witnesses: Chris Woodhouse and Kristen Ennis. One other witness, Bill Robertson, was available on behalf of the employer but did not testify. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 31, 2009. He worked part-time (20 to 25 hours per week) as a bakery clerk at the employer's Iowa City, Iowa store. His last day of work was February 13, 2011. The employer discharged him on February 17, 2011. The reason asserted for the discharge was failure to follow instructions in carrying out the duties of his job.

The claimant's immediate supervisor, Ms. Ennis, had various concerns and frustrations over many months regarding the claimant fully following her instructions. However, he had never been given any written warnings. There were some verbal counselings, including most recently on or about February 10, but none that indicated that the claimant's job could be in jeopardy.

The verbal discussion on February 10 was a result of the claimant not making additional cookies as directed. The claimant had understood that he was to pull and replace outdated cookies on the shelf, but did not bake new cookies because he found that there were no outdated cookies on the shelf.

The final incidents which then led to the discharge occurred on or about February 11 and February 12. On that date, the claimant was to prepare and set out donut holes. He did, but only of one flavor. The employer asserted that he had been told to set out two flavors, but the claimant denied he had been told so, and that there was only one flavor in the freezer the donut holes were stored. There was also a concern that the claimant had been told to make cinnamon rolls, had started to do so, and had put them into a "proof box" before leaving, but had failed to inform the employer. However, the claimant had informed the bread maker before leaving that the cinnamon rolls were in the proof box.

Additionally, the following day the claimant was again to make rolls for an item in the current advertisement. He did make cinnamon rolls, but did not make cherry rolls. The claimant had not understood that both kinds were needed, and believed only the cinnamon rolls were needed. Finally, some months prior, because the claimant had been punching in as much as an hour early, the claimant had been verbally instructed he could not punch in more than a few minutes before his scheduled start time. There were then occasions during final week of the claimant's employment he had punched in between 15 and 20 minutes early.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to follow instructions in the performance of his job duties. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. The claimant had not previously been clearly warned that his conduct was unacceptable to the extent that future problems could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). While the employer had a

good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's March 28, 2011 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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