

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT C WALTERS
Claimant

APPEAL NO. 08A-UI-08600-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/13/08 R: 04
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 22, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 16, 2008. Claimant participated with Ian Blanchard, temporary kitchen helper. Employer participated through Dave Beach, store director; Kasey John, kitchen helper; and Kristen Lampe, kitchen helper and was represented by Barb Frazier Lehl of Unemployment Insurance Services LLC. Employer's Exhibits 1 and 3 were received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time kitchen manager from March 12, 1984 until July 3, 2008 when he was discharged. On June 21 he returned from a catering job and yelled at Kasey John in front of the kitchen staff that she should have had the kitchen better organized and the catering containers put away. Then he walked to the back and started yelling at the Chinese food area employees for using a kitchen cart. Then he continued walking around the kitchen area and complained about the mess. There were also customers in the area and John left the area crying. Lampe had also observed claimant raising his voice towards her and other employees on June 23, 2008 to the point that she asked to transfer out of the kitchen and dreaded going to work. Claimant had multiple discussions with Lampe about her job performance but Beach was not present for them. Blanchard, who used to work regularly in the kitchen and currently teaches elementary school worked in the kitchen and on a catering job on June 21. He was not present during the entire shift since he was out on a catering job but when he was there he did not observe claimant yelling or screaming but, but giving orders to employees to the point of "nit-picking" and saw that claimant was frustrated but did not see any behavior that was "out of line." He either was not present for or did not hear about the encounter with the Chinese food employees and did see him having a serious conversation with Donna Adolf. Adolf was upset because claimant initially denied her request to alter her hours

because of the long flooding-related detour she had to take to work. Claimant told her she would have to find her own shift replacements but then did agree to alter her schedule. On June 23, 2007 Beach witnessed claimant verbally abusing an employee Susan Brogue until she cried and left the department and issued a final warning for mistreatment of employees. He also arranged to have another manager present with claimant for disciplinary action of employees but Beach did not sit in on meetings between claimant and Lampe.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While Blanchard did not observe claimant yelling or screaming at employees, and other witnesses for employer may have escalated their recollection of the claimant's voice, Blanchard did observe claimant to be "frustrated" and "nit-picking" and was otherwise not present during the entire shift and admittedly did not observe the incident with the Chinese food employees. Thus, employer has established, given the June 2007 warning for employee verbal abuse, that claimant again upset multiple employees on June 21, 2008 to the point that two of them cried. Claimant's repeated verbal abuse of employees in front of others after having been warned is evidence of willful misconduct. Benefits are denied.

DECISION:

The September 22, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs