

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS J MCMANN
Claimant

APPEAL NO: 15A-UI-06246-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/10/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's May 21, 2015 decision (reference 01) that concluded Dennis J. McMann (claimant) was 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 July 14, 2015. The claimant participated in the hearing and was represented by Robert Legislador, Attorney at Law. Dane Swenson, hearing representative, appeared on the employer's behalf and presented testimony from two witnesses, Jeff Meyer and Keely McDonald. During the hearing, Employer's Exhibit One was entered into evidence. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on February 10, 1998. Since March of 2015 he worked full time as the catering manager at the employer's Cedar Rapids, Iowa store. His last day of work was May 9, 2015. The employer discharged him on that date. The reason asserted for the discharge was that he failed to report property damage caused to the company van.

On the morning of May 5, the claimant had parked the catering van in the store parking lot but had hit a cement pillar, denting the passenger side panel. Another employee noticed the damage and asked the claimant if he was going to report the damage. The claimant responded that he wanted to wait and report the damage to Blum, the store director, when Blum returned to the store on May 7. On May 7 the claimant was in early, about 6:11 a.m., and Blum was in at

about 6:52 a.m. At about 4:30 p.m. the other employee asked Blum if he had seen the damage to the van, so Blum became aware of the damage at that point and confronted the claimant.

The employer asserted that there was a verbal “best practices” policy that any property damage was to be reported “immediately.” The claimant denied that he had ever been advised of such a verbal policy, and the employer did not establish by a preponderance of the evidence that he had been so advised. The claimant acknowledged that he could have informed Blum earlier in the day on May 7 about the damage, but had gotten busy with other work, and had not realized the seriousness of ensuring that the damage was reported promptly, and so had put it off until later in the day, which became too late. As a result of this incident, the claimant was discharged.

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 which was a material breach of the duties and obligations owed by the employee to the employer. Rule 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 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. Rule 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. Rule 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 promptly report the damage to the catering van to management. Under the circumstances of this case, the claimant’s failure to do so was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer 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 May 21, 2015 decision (reference 01) is affirmed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css