IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

CHRISTOPHER A KNOLL
Claimant

HY-VEE INC
Employer

APPEAL NO. 18A-UI-05118-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/08/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's April 24, 2018, decision (reference 01) that concluded Christopher Knoll (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 21, 2018. The claimant participated personally. The employer participated by Julie Jones, Human Resources Manager; Ryan Smith, Frozen Dairy Manager; Ryan Reidburn, General Merchandise Manager; and Dru Lashbrook, Store Director. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 November 20, 2012, and at the end of his employment he was working at the Winterset, Iowa, location as a full-time meat manager. He signed for receipt of the employer's handbook, manual and dress code on February 16, 2015.

Sometime in mid-December 2017, the employer issued the claimant a written warning for not knowing product dating. The employer notified him that he had to have a plan. If he failed, it would result in his termination from employment.

On or about February 9, 2018, the employer issued the claimant a written warning for inappropriate behavior on unknown days. The employer notified him that his visits with the health inspector and other managers had "to go well" and the claimant needed to "communicate well, effectively, and respectfully". If he failed, it would result in his termination from employment.

In December 2017, and on March 14, 2018, the employer had conversations with the claimant about conduct. The employer did not warn the claimant about termination.

On March 30, 2018, the claimant was working in the meat department with a subordinate asked him if there was more cream cheese in the cooler. The claimant turned and went through the swinging doors in a hurry. When he did so, the doors swung so hard that they came off the bottom pegs. This scared him, the subordinate, and two people in the backroom. The claimant caught the bottom of the doors with his hands so no one would get hurt. The claimant said, "Oh, hey guys" to the people in the backroom and proceeded to the cooler.

In the cooler, he was faced with boxes on pallets stacked taller than his head. The cream cheese was near the bottom. The claimant was mad at himself because the door came off the lower hinges. It had happened before to other workers but he was busy on March 30, 2018, Good Friday. The claimant vented by yelling in the cooler as he unstacked boxes. He used profanity at least once. When he got to the correct box, he handed the cream cheese to the subordinate. Then he returned to the doors and fixed them. The repair took about one minute. The store director was nearby and the claimant told him what had happened.

The store director heard about the incident. He shrugged it off, not thinking it was "a big deal". The claimant continued to work for the employer. The store director worked on March 31, April 1, April 2, and April 3, 2018. He called in sick April 4 through 6, 2018. During the days he called in sick, he telephoned his employees and asked them questions about the claimant's behavior on March 30, 2018. On April 7, 2018, the store director terminated the claimant for conduct not becoming a Hy-Vee employee.

The claimant filed for unemployment insurance benefits with an effective date of April 8, 2018. The employer participated personally at the fact finding interview on April 23, 2018, by Julie Jones.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. On March 30, 2018, the claimant accidentally, knocked the door off the hinges. Employees made this happen before. This particular incident was not enough to terminate the claimant.

The problem lies in the claimant's venting behavior in the cooler. The subordinate did not appear to be afraid of the claimant because he stayed with him. There was no testimony from any eye witness stating the claimant's words in the cooler could be heard by customers. The employer did not previously issue the claimant any warning about using profanity.

Inasmuch as the employer had not previously warned the claimant about the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on March 30, 2018. The claimant was not discharged until April 7, 2018. The employer asserts that the store director was sick and unable to terminate the claimant prior to April 7, 2018. The store director was able to work away from home through April 3, 2018, and

from home after that. The only reason the claimant was not suspended after March 30, 2018, is that the store director did not think what the claimant did was "a big deal". The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's April 24, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs