

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01612-DWT
OC 01/04/04 R 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's February 5, 2004 decision (reference 01) that concluded Jami A. McNabb (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2004. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf with Jim Teepe, the manager, and Scott Stern, an assistant manager, as witnesses. Pat Howarth observed the hearing. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 8, 2003. She worked as a part-time wine and spirit clerk. The claimant worked every Sunday.

During the week of September 21, the claimant learned she could visit her daughter on Sunday, September 28. The claimant had not seen her daughter for several weeks. The claimant asked many employees to work her Sunday shift but no one would work for the claimant. The employee who could work for the claimant had to be an adult to work in the wine and spirit department and most employees were already scheduled to work because of the store inventory that day. The claimant talked to her immediate supervisor who told her it was the employer's policy to find your own replacement and if she could not, she needed to talk to Teepe or Stern.

At the end of her midnight shift Saturday night, the claimant told Stern she did not think she would be able to work the next day because she was visiting her daughter. Stern told the claimant to call the employer on Sunday if she was not coming to work. The claimant did not call on Sunday to report she would not be at work because she was afraid of what the employer would say to her.

The employer discharged the claimant on Monday, September 29, for failing to report to work or notify the employer that she would not be at work as scheduled. The claimant had not previously done anything like this before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant knew the employer expected to find her own replacement, which she tried to do. Earlier in the week, the claimant told her immediate supervisor she would

not be able to work as scheduled on Sunday. Before the claimant left work on Saturday night, she told the assistant manager she would not be able to work as scheduled on Sunday because she was visiting her young daughter. The claimant told the employer before her Sunday shift she was unable to work as scheduled. The claimant's failure to call the employer on Sunday and again tell the employer she was unable to work as scheduled at most amounts to poor judgment. Since the claimant had no previous no-call/no-show incidents this one situation does not establish that the claimant committed work-connected misconduct. Even though the employer may have been justified in discharging the claimant, the facts do not establish that the claimant committed work-connected misconduct for unemployment insurance purposes. As of January 4, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 5, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 4, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf