

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW K WARD
Claimant

APPEAL NO. 11A-UI-04489-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/18/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Andrew Ward filed a timely appeal from a representative's decision dated March 30, 2011, reference 03, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on April 28, 2011. Claimant participated personally. The employer participated by Ms. Alice Rose Thatch, Hearing Representative and witnesses, Tim McCracken, Human Resource Manager and Kemp Harper, Night Stock Manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Andrew Ward was employed by Hy-Vee from August 24, 2008 until March 7, 2011 when he was discharged by the employer. Mr. Ward held the position of full-time night stocker and was paid by the hour. His immediate supervisor was Kemp Harper.

On March 7, 2011, Mr. Ward called his immediate supervisor to report that he would be unable to report to work that night due to illness. The claimant reported that he would not be able to supply a doctor's excuse because he did not have the funds to obtain one. At that time the claimant was informed by his immediate supervisor that according to Hy-Vee policy, "You are done." Mr. Ward was just returning from a one-week suspension imposed by the employer because the claimant had been unable to provide medical documentation to verify that he had seen a doctor when he had previously call off work. Under company policy employees are subject to suspension and/or discharge if they do not provide medical documentation to the employer.

Based upon the statement made to him by his immediate supervisor on March 7, 2011, Mr. Ward reasonably concluded that he had been discharged at that time and therefore did not report again for work or provide any further notice to the employer.

It is the employer's belief that Mr. Ward was instructed to call company management by his supervisor on March 7, 2011 and that the claimant's failure to contact management or to report again for work caused the claimant to accumulate three incidences of no-call/no-show which the company considers to be a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the hearing that the claimant did not voluntarily quit employment but that the claimant was discharged from work on March 7, 2011 and that the claimant was reasonable in his conclusion that no further work was available to him after that date.

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may warrant a discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court further held, however, in the case of Higgins that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

In this case the evidence establishes that Mr. Ward had been absent at times due to a recurring medical condition and had properly notified the employer of his impending absences. Due to a lack of funds and/or medical insurance Mr. Ward was unable to provide a medical statement each time he was absent and, therefore, the claimant was suspended from work for a one-week period. Prior to his return on March 7, 2011, Mr. Ward called in to report he was ill with a "cyst" and could not report that night. When the claimant stated that he would be unable to provide a doctor's statement, his immediate supervisor made a statement that the claimant reasonably concluded meant that he was being discharged at that time. The supervisor stated in effect, "Based upon Hy-Vee policy, you are done."

The administrative law judge concludes that the claimant, after reasonably concluding that he had been discharged, had no obligation to further report or provide further notification to the employer that day. As the claimant's most recent absence was due to illness and properly reported, the administrative law judge concludes that the claimant was discharged for no disqualifying reason.

DECISION:

The representative's decision dated March 30, 2011, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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