

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL F HARRISON
Claimant

APPEAL NO: 10A-UI-14602-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 09/26/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michael F. Harrison (claimant) appealed a representative's October 15, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2010. The claimant participated in the hearing and was represented by Ryann Miller, Attorney at Law. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from one witness, Eric Richey. During the hearing, Claimant's Exhibits A and B were 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?

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 2005. Since about 2006 he worked full time as a night stocker in the employer's Council Bluffs, Iowa store. His last day of work was a shift that began on the evening of August 1 and ended on the morning of August 2, 2010. The employer discharged him on that day. The reason asserted for the discharge was excessive tardiness after prior warnings.

The employer had given the claimant a warning for being over two hours late on July 5. He was also given warnings on cell phone usage and dress code violations. The employer gave the claimant a warning on July 27, 2007 reciting these same issues in addition to other concerns, but specifically including repeated tardiness; the employer cited four additional occurrences in the written warning, three of which had occurred consecutively on July 23, July 24, and July 25. The reason for the four tardies cited in the warning was that the claimant did not have a car and so relied upon friends to provide him with transportation to get to work, but those friends frequently were not sufficiently reliable about picking him up in time to be dropped off to work on time. He was advised in the warning that any further violations would result in termination.

For the claimant's shift on August 1 he was scheduled to report at 9:00 p.m. He did not clock in that evening; he came into the store at approximately 9:15 p.m. and proceeded to begin his duties. The reason he was late that evening was again due to unreliable transportation from friends. When the shift ended the next morning, the employer verified that the claimant had in fact been late to work, and discharged him.

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); Iowa Code § 96.5-2-a.

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. 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. 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Attendance problems due to issues that are of purely personal responsibility, specifically including reliable transportation, are not excusable. Higgins, supra; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant did have prior excessive unexcused tardies. His final tardy was also not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future tardies could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 15, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 2, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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