

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEY L ANHALT
Claimant

APPEAL NO. 09A-UI-16256-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/04/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated October 23, 2009, reference 01. The decision allowed benefits to the claimant, Joey Anhalt. After due notice was issued a hearing was held by telephone conference call on December 4, 2009. The claimant provided a telephone number to the Appeals Section. That number was dialed at 8:00 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record.

The claimant called the Appeals Section at 8:15 a.m. and the judge called his number a second time. Again the only response was the voice mail and another message was left. By the time the record was closed at 8:19 a.m. the claimant had not responded to the message and did not participate in the hearing.

The employer participated by Produce Clerk Greg Mennega, Produce Clerk Jeff Suchomel, and was represented by UIS in the person of Tim Spier.

ISSUE:

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

FINDINGS OF FACT:

Joey Anhalt was employed by Hy-Vee from December 1, 1987 until November 9, 2009 as a full-time product manager. During the course of his employment he had received counselings about his job performance, some of which touched on his credibility. He had once told Store Director Jeff Suchomel he did not have a certain item stocked in his department because the warehouse was out, but when the director called the warehouse, he found this was not true. In May 2009 he was counseled about not checking his e-mails and scheduling his staff appropriately. He received a warning in July 2009 for scheduling himself off for the holiday, along with another experienced member of his staff, and leaving a brand new employee to

handle one of the busiest grocery shopping days of the year without any training or help. At that time Mr. Suchomel told him his job could be in jeopardy.

The final incident was falsification of company records. On September 28, 2009, the claimant handed in the monthly report for his department to the store director. At that time he said he was missing some invoices for August and when Mr. Suchomel asked him what the dollar amount was, Mr. Anhalt did not know. The employer told him he must find them and he said he would get them tomorrow. Mr. Suchomel said this information must be in that day as he had to hand in his own reports. The claimant was ordered to find the invoices immediately and by the end of the day he had done so.

When the claimant confessed the invoices from August were missing he had admitted his reports for the month of August has been falsified. Produce Clerk Greg Mennega had told Mr. Anhalt about the missing invoices before the claimant turned in his report for August. This falsification resulted not only in his own report being false but caused the store director to submit his own report with incorrect information. This inflated the profit statement for the store, giving the corporate office inaccurate information.

The claimant had received a copy of the employee handbook which states falsification of company records is grounds for discharge. Mr. Suchomel told the claimant on September 28, 2009, he would have to consider what action to take as a result of this falsification. He determined to discharge the claimant and notified him on October 5, 2009.

Joey Anhalt has received unemployment benefits since filing a claim with an effective date of October 4, 2009.

The record was closed at 8:19 a.m. At 8:21 a.m. the claimant called again, indicating he was at another phone number than the one he had provided to the Appeals Section.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his poor work performance. The final incident was a knowing and intentional falsification of his monthly report for August 2009. He submitted the report to the store director knowing he had missing invoices for that month not mentioned in the report and it was therefore inaccurate. This was not an isolated incident of poor judgment or oversight, but a final occurrence of failing to perform his job duties in compliance with company policy. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant received the notice of the hearing and notified the Appeal Section of the number where he could be reached for the hearing. That number had changed by the date of the hearing and he did not properly notify the Appeals Section of the change. The judge twice called the number the claimant had provided but he was not there. It is the responsibility of the parties to keep their telephone information up to date and correct for the hearing. Failure to do so does not constitute good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of October 23, 2009, reference 01, is reversed. Joey Anhalt is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs