IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON P STRABLE
Claimant

HY-VEE INC
Employer

APPEAL NO: 12A-UI-01000-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/04/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's January 18, 2012 decision (reference 01) that concluded Jason P. Strable (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2012. The claimant participated in the hearing and was represented by John Strable. John Fiorelli of Corporate Cost Control appeared on the employer's behalf and presented testimony from three witnesses, John Richardson, Beverly Rigg, and Mike Hardy. During the hearing, Employer's Exhibit One and Claimant's Exhibit A 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 1996. He worked full time as a night stocker at the employer's Indianola, Iowa store. His last day of work was the shift that went from the evening of December 4 into the morning of December 5, 2011. The employer discharged him on that date. The reason asserted for the discharge was throwing undamaged product into a trash compactor.

The employer has a store policy that specifies that "any intentional damage or defacing of store property will result in disciplinary action or termination." At about 3:00 a.m. on December 5 the claimant had taken a "banana box" filled with about 24 boxes of cereal, fruit snacks, and granola, valued at about $58.00, and had thrown the box into the trash compactor. The box was retrieved from the compactor by the claimant's manager; the claimant indicated that he had

thrown the banana box and its contents into the compactor because he had thought the product was old and it had been getting in the way. In fact, the box and product was simply overstock that was being kept in the back until it was needed.

There had been a similar occurrence in October with a box of spices. On that occasion the claimant's manager and the store director, Richardson, had spoken to the claimant and had told him that he was not to be disposing of any product, even if he thought it was old. The claimant responded that he understood. When the claimant again threw out the product on December 5, the employer determined that the claimant had done so intentionally against what he had previously been told, and so determined to discharge him.

At the time of discharge the claimant was 33 years old. While the claimant did graduate high school, the claimant's parents had realized virtually the claimant's whole life that he had some difficulties processing information and in dealing with some situations. They believed that the employer was aware of these difficulties as well. However, prior to the discharge the claimant had not been given any specific condition diagnosis, and no particular disability had been claimed or accommodation sought. After the discharge, the claimant's parents had him screened by a licensed psychologist. The psychologist concluded that the claimant met the criteria for Asperger's Disorder, a form of autism. The psychologist further noted that the claimant had the "ability to understand basic/simple vocational instructions and procedures" but that while he was "intellectually capable of comprehending basic vocational instructions and procedures, it is noted that learning is sometimes difficult for Asperger's individuals due to their concrete thinking, inability to abstract, and rigidity in behavior/concept formulation." Further, the psychologist observed that "Many of his responses are one word such as "yes" and "no." He frequently says he understands things when he really doesn't."

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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).

The reason cited by the employer for discharging the claimant is his throwing out of product on December 5 when he had previously been instructed he could not throw away any product. Misconduct connotes volition. *Huntoon*, supra. While the employer may not have had any reason to know that the claimant had an intellectual disability that could affect the claimant's understanding of instructions or discipline, and while the employer may have given the claimant the instruction in October that it was wrong for him to throw out what he thought was "old" product, it is clear that the claimant failed to understand or remember the instruction because of his condition, even though he may have said that "yes," he understood, so when he repeated the behavior on December 5, it was not done with the intent to do something he in fact knew was wrong. While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 18, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs