

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD J HOOVER
Claimant

APPEAL NO. 10A-UI-07798-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/18/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's May 25, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on July 30, 2010. The claimant participated in the hearing. Dan Speir represented the employer. Collin Venega, the store director, testified on the employer's behalf. During the hearing Employer Exhibits One through Five were offered and admitted as 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on October 9, 2001. The claimant worked as a full-time product specialist. Prior to late March 2010, the claimant received warnings for yelling at a vendor (Employer Exhibit Four) and a sexual harassment complaint (Employer Exhibit Five).

In late March or early April 2010, after the employer completed an inventory, the employer discovered two incidents of what the employer considered a forced balancing by the claimant. On March 19, 2010, the employer concluded the claimant entered a 25-cent bottle deposit to "force" balance an invoice. The employer concluded that when the claimant could not find a 25-cent discrepancy, he added a 25-cent bottle deposit so the invoice would balance. (Employer Exhibit One). On a March 26 invoice, wine was entered as one case instead of 12 units. (There were 12 bottles in the case.) This error resulted in the unit cost being reflected as \$72 per unit instead of \$6 per unit. (Employer Exhibit Two.) During this time, the employer was in the process of new invoicing system to reflect units of product instead of cases.

On March 26, the claimant accepted merchandise that was delivered to the wrong store. (Employer Exhibit Three.) Instead of reading the bill of lading to verify the merchandise was delivered to the right store, the claimant just signed off on the paperwork.

The employer had not previously warned the claimant about issues with his job performance or the way he entered product into the computer for inventory control. The employer had concerns with the claimant's attitude. Venega considered the claimant arrogant. Even though the claimant had not previously received any warnings for job performance or for problems similar to what occurred on the March 19 and 26 invoices, the employer discharged the claimant on April 14, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged the claimant for reasons constituting a current act of 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the employer knew the claimant accepted merchandise on March 26 that was supposed to have been delivered to another store, this incident does not amount to a current act. The incidents the employer learned about after completing an inventory revolved around March 19 and 26 invoices. The facts do not establish that the claimant intentionally failed to enter product correctly on the March 26 invoice. The total dollar amount balanced even though product was not listed as 12 units. The claimant did not have any previous warnings for problems of a similar nature. The facts indicate the claimant may have been careless or negligent when he completed the March 26 invoice, but this isolated incident does not rise to the level of work-connected misconduct.

On the March 19 invoice, the claimant put down a 25-cent bottle deposit to balance the invoice. For a claimant to commit work-connected misconduct, the act must be intentional and substantial. The facts do not establish that this 25-cent addition for a bottle deposit was substantial. The claimant may have made an error in judgment if he put this amount down to

balance the invoice when he could not find the problem, but this incident does not by itself rise to the level of work-connected misconduct, either.

The employer established business reasons for discharging the claimant. The claimant had received warnings about other issues and the employer considered the claimant to have an arrogant attitude, but the evidence does not establish that he committed work-connected misconduct. Therefore, as of April 18, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's May 25, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed a current act of work-connected misconduct. As of April 18, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw