

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON BOGE**  
Claimant

**APPEAL NO: 11A-UI-03867-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02-06-11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 10, 2011 and June 2, 2011. The claimant participated in the hearing with Attorney Judith O'Donohoe. Pat Ohlerking, Store Director; Stacy Hoard, Manager of Perishables, Steve Jeffrey, Assistant Store Director; Amanda Reynolds, Trainee/Cashier; Karen Burns, current employee; Vicki Zimmerman, former Hy-Vee employee; and Alice Rose Thatch, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibits A through D were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Hy-Vee from February 2, 2009 to February 8, 2011, when he was discharged for repeated inappropriate and unprofessional conduct. He completed the employer's harassment training program in approximately February 2009 and subsequently received warnings for sexually harassing subordinates but he continued to violate that policy, in addition to others, and it ultimately led to his discharge. The claimant received his first written warning for sexual harassment August 5, 2009, after he made inappropriate comments of a sexual nature to a customer regarding her possible application for employment with Hy-Vee. His next warning was issued November 19, 2009, for unprofessional conduct when speaking to a supervisor. The manager told the claimant not to yell down the aisle and the claimant responded, "Whatever!" The manager tried to take the conversation off the floor but the claimant continued to discuss it on the sales floor without consideration that there were customers present. He received a performance review December 2, 2009, and received a below expectation rating on interpersonal relationships and communication with co-workers. The employer issued the claimant an additional warning December 2, 2009, for inappropriate comments in the break room. He was telling employees that they better watch

what they say around there as it can get distorted after his first written warning that day. Several part-time employees reported that the claimant seemed agitated and "off the wall." The first written warning issued to him in 2010 occurred March 19 and it was for repeated unprofessional conduct. He handled a coupon situation poorly and upset a customer; he changed a price without authority and without passing on the information; and he called IBM on a tech's personal cell phone and failed to go through the proper channels. Management had serious concerns about the claimant's ability to handle situations and his inconsistency in explaining situations. The claimant's conduct continued to create problems for the employer's operations and another written warning was issued to him September 10, 2010, stating the entire management staff finds it difficult to work with the claimant as he refuses to follow directives, he becomes defensive with constructive comments, he disappears for periods of time when no one knows where he is, and he spends time on his personal cell phone or the computer. Additionally, there were complaints that the claimant was not treating subordinates with respect and would not cooperate with members of management. The claimant's unprofessional conduct continued and he was placed on a corrective plan of action December 29, 2010. Many of the issues listed in that warning were the same issues listed in his September 2010 warning. He continued to disregard directives, to argue about issues when the conversation was over, and to treat his co-workers, both subordinates and supervisors, in a disrespectful manner. The employer demoted him to a second assistant and he was moved to the front end. The warning advised the claimant that he was being given one final chance and if he failed to correct his behavior, his employment would be terminated. The employer discharged the claimant after continued inappropriate comments. When checking out at central pay January 31, 2011, he got \$40.00 in change and said to Associate Amanda Reynolds, "Forty dollars make you holler," which is a known sexual reference. The claimant later lectured Ms. Reynolds for calling him to customer service to ask a question. The final incident occurred after the claimant first said, "I know I'm not supposed to say this..." and then he told her how nice her hair looked, that she must be tanning and that it looked really nice when she wore her hair down. On February 6, 2011, Emily asked for a manager override and the claimant responded, "Anything for you Emily, except that one thing!" The claimant's conduct was creating a hostile work environment and he was discharged February 8, 2011.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for continued inappropriate and unprofessional behavior after repeated warnings. He knew his job was in jeopardy but it appeared to make little difference in how he conducted himself as there were repeated incidents following each warning and he failed to conduct himself in a manner required of any employee, let alone a management employee. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The March 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs

