

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STANLEY R DAVIS
9638 BUTLER TRL
NORWALK IA 50211

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 06A-UI-00494-JTT
OC: 12/11/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Stanley Davis filed a timely appeal from the January 5, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 31, 2006. Mr. Davis participated. David Williams of TALX UC eXpress represented Hy-Vee and presented testimony through Manager of Store Operations Laurie Russell, Store Manager Karen Ackley, and Manager-In-Training Robin Aksmit.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stanley Davis was employed by Hy-Vee Drug Store as a full-time Assistant Manager from February 28, 2005 until December 14, 2005, when Manager of Store Operations Laurie Russell discharged him. The final incident that prompted the discharge occurred on December 13,

2005. Mr. Davis had commenced his shift at 12:30 p.m. Mr. Davis was the only manager on duty during the evening shift. Manager-In-Training Robin Aksmit was also on duty. The store closed at 10:00 p.m. Mr. Davis left the store at 11:00 p.m. Mr. Davis neglected to secure the safe before he left for the evening. Mr. Davis left the safe door open an inch or two. Mr. Davis had been training Ms. Aksmit while he completed his end-of-shift duties involving the safe. Mr. Davis was in a hurry because he was concerned about inclement weather. Mr. Davis thought he had secured the safe. The next morning, Ms. Russell discovered the safe open when she arrived at work and notified Store Manager Karen Ackley, who also witnessed the open safe.

Ms. Ackley had issued a written warning to Mr. Davis on June 19, 2005, for leaving the safe open. At that time, Mr. Davis had closed the safe door, but failed to tug on the door handle to make certain the door was latched. Ms. Ackley warned Mr. Davis that if he failed to again to secure the safe he would be discharged from the employment. There were no other instances of Mr. Davis failing to secure the safe. There were no other documented instances of carelessness or negligence aside from warnings Mr. Davis had received regarding not calling for assistance when customers were waiting in line and a warning issued when Mr. Davis had reprimanded an employee without being aware a customer was within hearing range.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Davis was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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

The evidence in the record establishes that on December 13, 2005, Mr. Davis was negligent in failing to secure the employer's safe. Mr. Davis had previously been careless and/or negligent in failing to secure the employer's safe on June 19, 2005. There was a six-month gap between these two isolated instances of ordinary negligence. Though the employer warned Mr. Davis in June that a second failure to secure the safe would result in discharge, this warning did not elevate the second failure to secure the safe to anything beyond an isolated instance of ordinary negligence. The evidence fails to establish additional negligence or carelessness. The evidence fails to establish carelessness and/or negligence sufficiently recurrent to manifest willful or wanton disregard of the employer's interests, 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. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Davis was discharged for no disqualifying reason. Accordingly, Mr. Davis is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Davis.

DECISION:

The Agency representative's decision dated January 5, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

jt/kjw