

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY L MEYER
Claimant

APPEAL NO. 13A-UI-12828-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/13/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on December 10, 2013. Claimant participated. Employer did participate through Jeff Bortell, Store Director and Ryan Parker, Perishable Manager and was represented by Ajah Anderson of Corporate Cost Control. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a demonstrator beginning on January 29, 2013 through October 2, 2013 when he was discharged. The claimant had received verbal warnings before for failing to follow instructions from female coworkers. He had also been given a written warning for asking a child, "what the hell do you want," when the child was watching him demonstrate. Despite the claimant's allegations to the contrary, the claimant was trained on how to perform his job duties and knew that he was not allowed to swear at coworkers or customers. The claimant demonstrated on September 28 and then took his dirty dishes to the back room. Another coworker, Brian, asked him to clean up his dishes and the claimant yelled at him and swore at him saying; wash the "damn" things yourself. The claimant then threatened to have Brian fired. The claimant admitted to both Mr. Bortell and Mr. Parker that he did swear at Brian on September 28. The claimant admitted at hearing that he knew he was not allowed to swear at coworkers. The claimant had received a final written warning prior to this incident and knew that any additional issues could lead to his discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew he was not allowed to swear at coworkers and had received a final written warning in June 2013 that put him on notice that any further incident could lead to his discharge. The administrative law judge concludes that the evidence establishes that on September 28 the claimant did swear at Brian and did threaten to get him fired. The claimant admitted the same to both Mr. Bortell and Mr. Parker during his meeting with them on October 2. The claimant's actions, use of profanity after prior warning, amount to misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 15, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs