

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA S LAIRD**  
Claimant

**APPEAL NO. 09O-UI-00486-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10/26/08 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Joshua Laird, filed an appeal from a decision dated November 21, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 28, 2009. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Human Resources Director Natalie McGee and was represented by UIS in the person of Tim Spier.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Joshua Laird was employed by Hy-Vee from August 30, 2007 until September 11, 2008 as a part-time order selector. He had received verbal warnings from his supervisors about his attendance and some counseling about use of profanity, his volatile temper, and the fact other employees found him intimidating. He was advised his job was in jeopardy as a result of his attendance.

On September 7, 2008, another employee reported to Supervisor Steven Dye the claimant had taken off his headset and thrown it to the ground, breaking it. Mr. Laird had already come to Mr. Dye and said the headset had broken, but told the supervisor it had accidentally fallen to the ground and broken. The claimant was sent home by Mr. Dye and told to contact Warehouse Manager Jeff Kent to set up a meeting. The meeting was held on September 7, 2008, with the claimant, Mr. Kent, and Assistant Vice President of Warehousing Denny Bisgard. Mr. Laird was discharged at that meeting for attendance problems and destruction of company property.

## REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not provide the name of, participation by, or a written statement from, the only eyewitness to the allegation of destruction of company property. It did not even provide any testimony from Mr. Bisgard, who was the manager responsible for the decision to discharge. The claimant denied the allegations made by the employer's witness, whose sole source of information were written notes from the personnel file.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of November 21, 2008, reference 01, is reversed. Joshua Laird is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw