

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J VORNBROCK**  
Claimant

**APPEAL NO: 12A-UI-02857-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/29/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 13, 2012, reference 01, that held the claimant was not discharged for misconduct on January 29, 2012, and benefits are allowed. A telephone hearing was held on April 5, 2012. The claimant participated. John Fiorelli, Representative, Jeff Bortell, Store Director, and Mark Jeffries, Operations Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 30, 2010, and last worked for the employer as a part-time night clerk stocker on January 25, 2012. The claimant made a complaint to the employer night stock manager Hansen about supervisor Struble's conduct and threats toward him (assistant manager night stocker) in the spring of 2011.

On January 20, 2012 claimant gave a written complaint statement to the store manager about Struble. He complained that Struble struck him with a roll of cling wrap and shoved him to the ground. Claimant felt the employer was not providing him a safe work environment.

The store manager met with Struble and claimant about the complaint. The manager acknowledged this is the second time Struble has gotten physical with him. When the manager questioned Struble, he admitted the physical contact, but complained about claimant throwing a plastic ball over an aisle that struck him. The manager concluded with a write-up against Struble for a second physical contact incident stating a third time could result in more serious actions against him. Claimant admitted the horseplay incident that was documented for his file. Although the employer does have written disciplinary forms, none was issued to claimant for his horseplay.

On January 23, Struble issued a written complaint against the claimant for attitude issues. Although the employer manager offered a write-up warning (e-mail document) against claimant as evidence, it was not issued or presented at that time. Claimant made a complaint to the employer Des Moines office human resource department about Struble and the failure of the local store to deal with it. The store manager acknowledged in the hearing he was advised by HR about it.

Claimant let a shift manager know he was clocking-out prior to the end of his work shift on January 20, 22 & 23 to avoid contact with Struble. Claimant last worked on January 25. The store manager called claimant into a meeting on January 27 in the presence of Operations Manager Jeffries. The manager advised claimant that he had three write-ups against claimant but placed them on his desk rather than presenting them to him. Claimant became upset with the employer when he perceived it was focusing on him for discipline and not Struble. In frustration and anger, he responded that he might bodily harm Struble in the future in order to defend himself. The employer terminated claimant for making threatening statements against Struble.

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

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 27, 2012.

The claimant's perception that the employer failed to provide him a safe work environment is supported by the evidence in this matter. The employer manager acknowledges that claimant was physically assaulted by a supervisor twice yet it terminated claimant for making threatening statements against that supervisor in anger and frustration when it was apparent the employer failed to take meaningful corrective action.

The employer attempted to shift the focus to claimant's threatening remarks in the January 27 meeting as justifiable termination/job disqualifying misconduct when the real perpetrator of the adverse conduct was supervisor Struble. The claimant was advised of three discipline actions on January 27 that were never presented to him for his acknowledgement contemporaneous with the actual incidents that is shown by lack of his signature. Claimant had a good cause of leaving work early and with notice to a shift manager, because he correctly perceived the employer wasn't going to provide him with a safe work environment.

Given the history of the working relationship between claimant and Struble, it was far more likely that Struble would physically harm claimant for a third time than claimant carrying-out any threat of harm against Struble. The employer chose to terminate claimant to resolve the matter that is its prerogative, but it is not for job disqualifying misconduct.

**DECISION:**

The department decision dated March 13, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on January 27, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs