

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID D MEYERS**  
Claimant

**APPEAL NO. 08A-UI-07905-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/10/08 R: 02**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

David Meyers filed an appeal from a representative's decision dated August 29, 2008, reference 01, which denied benefits based on his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held on September 23, 2008 in Des Moines, Iowa. The employer participated by Chanel Lathrop, Night Stocker; Krissi Rosenberger, Human Resources Manager; and Gary Brown, Night Stock Manager. The employer was represented by Daniel Speir for Unemployment Insurance Services. Mr. Meyers did not appear for the hearing.

**ISSUE:**

At issue in this matter is whether Mr. Meyers was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Meyers was employed by Hy-Vee, Inc. from September 23, 2006 until August 11, 2008. He worked approximately 40 hours each week as a night stocker. He was discharged for assaulting and verbally abusing a coworker.

Mr. Meyers and a coworker, Chanel Lathrop, had been dating but broke off the relationship in May of 2008. He was directed to stay away from her after she complained of verbal harassment at work. On August 9, he approached her at work and made comments about her current boyfriend and referred to her as a "whore." He pushed her and she fell backwards over boxes. Approximately five minutes later, while the two were on break, Mr. Meyers again approached Ms. Lathrop and began verbally abusing her. He again made reference to her as a "whore." The supervisor observed him speaking to Ms. Lathrop and sent him home. Mr. Meyers was notified on August 11 that he was being discharged as a result of his conduct on August 9.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Meyers was discharged for pushing Ms. Lathrop and calling her inappropriate names. He had been warned to keep his distance from her but disregarded his supervisor's instructions when he deliberately went to her work area on August 9 to harass her. His conduct in pushing Ms. Lathrop to the extent that she fell down is sufficient, standing alone, to constitute disqualifying misconduct. He knew or should have known that pushing coworkers was contrary to the employer's expectations. His actions were contrary to the employer's interest in maintaining a violence-free workplace.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated August 29, 2008, reference 01, is hereby affirmed. Mr. Meyers was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw