

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

MONTY L LACINA
433 N26TH PL
FT DODGE IA 50501

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

TALX UC EXPRESS
4100 HUBBELL #78
DES MOINES IA 50317 4546

Appeal Number: 04A-UI-02949-H2T
OC 02-08-04 R 01
Claimant: Appellant (1)

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 8, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 27, 2004. The claimant did participate. The employer did participate through Bruce Murman, Human Resources Manager, Megan O'Boyle, Human Resources Coordinator, and was represented by David Williams of TALX UC Express.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a night stocker/clerk part time beginning March 21, 2003 through February 5, 2004, when he was discharged. The employer discovered by reading the local

newspaper, which is found in Employer's Exhibit One, that the claimant had been charged with possession of controlled substances and possession of drug paraphernalia. The charges against the claimant have since been dropped as part of a plea bargain. The claimant has not been convicted of either possession of marijuana or the possession of drug paraphernalia. However, the claimant admitted at hearing that he did have possession of both a controlled substance, marijuana, and that he had possession of drug paraphernalia. The employer's policy, which the claimant received, explicitly provides for termination of employees who have possession of illegal drugs. The claimant has admitted violating the employer's policy.

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.

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).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by violating its policy against possession of illegal

drugs. Notwithstanding the fact that the county attorney has agreed to drop the charges against the claimant, the claimant himself admitted the conduct which violates the employer's policy. The claimant violation of the employer's policy is disregard of the employer's rights and interests and is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The March 8, 2004, 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.

tkh/b