

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RANDY E CASON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 18A-UI-08337-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/08/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 27, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 27, 2018. Claimant participated personally. Employer participated by hearing representative Barbara Buss and witnesses Sara Lawler, Heather Walker, and Carey Lenning. Employer's Exhibits 1-10 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 28, 2018. Employer discharged claimant on June 28, 2018 because claimant was disrespectful and insubordinate to supervisors after receiving a warning for previously acting in an inappropriate manner to a manager.

Claimant worked in a call center taking phone calls from customers for Hy Vee, Inc. On June 15, 2018, claimant was working on a project when a supervisor asked claimant to take a call. Claimant did not take the call and the supervisor called claimant into his office. They had a back and forth conversation. Claimant's supervisor who was involved in the conversation did not testify at the hearing. Claimant stated that he believed all went well with the meeting and that things were worked out. Claimant's supervisor, and the supervisor's boss decided not to bring forth a Consultation Form based on this interaction. A week later, a supervisor over all of those that had discussed the situation decided claimant was to receive a conduct violation Consultation Form for this incident at the same time claimant was receiving a Consultation Form for attendance, based on recent absences and tardies.

The last, most recent event that led to claimant's termination occurred on June 28, 2018. Claimant was working on a remedy for a computer hiccup with a co-worker. Claimant's supervisor noticed that claimant hadn't taken a call for 26 minutes when there were calls to be taken. She sent an instant message to claimant stating that he hadn't taken a call for 26

minutes and asking, "Do you need help with anything?" Claimant didn't respond to the instant messaging, so the supervisor came by claimant's desk and asked claimant if he needed help with anything. Claimant responded to this stating that he would just stop what he was doing in order to take calls rather than address his co-worker's computer problems. Employer stated he did so loudly. Claimant denied this. Employer contacted human resources

Claimant's supervisor stated that claimant's volume of voice and actions at the hearing was equal to his volume in responding to the supervisor's query on June 28, 2018. (The administrative law judge notes that claimant was not excessively loud during the hearing. While the claimant did occasionally talk over the administrative law judge and speak while others were testifying, these actions were not wildly inappropriate nor did they rise to disrespect or insubordinate activity as claimant was easily settled down).

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code

§ 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning lack of respect and insubordination. The last incident, which brought about the discharge, fails to constitute misconduct because the last most recent acts employer stated created the insubordination were not refusals to do what claimant stated. Claimant was trying to work in the employer's best interest when he was showing a co-worker how to work around a computer malfunction. His supervisor instant messaged claimant, but it was not shown whether claimant was at his computer when the supervisor sent the message regarding his not taking calls. As the claimant did not need help, he didn't respond. This is not an intentional act in contravention to employer's interest. Claimant's tone of his response – which was stated to be the same tone and volume as claimant used when speaking with the administrative law judge, was not insubordinate, although it did show claimant's excited nature. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 27, 2018, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn