

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL C PEPPER
Claimant

APPEAL NO. 11A-UI-05202-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/06/11
Claimant: Respondent (4)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated April 11, 2011, reference 02, which held that no disqualification would be imposed regarding Daniel Pepper's separation from employment. After due notice was issued, a hearing was held by telephone on May 16, 2011. The employer participated by Les Bruner, human resources manager, and was represented by John Fiorelli of Corporate Cost Control, Inc. Exhibits One through Six were admitted on the employer's behalf. Mr. Pepper did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pepper was employed by Hy-Vee, Inc. from May 30, 2008 until August 16, 2011. He worked from 20 to 30 hours each week as a checker. He was discharged due to repeated tardiness in reporting to work.

On August 12, 2010, Mr. Pepper received a written warning regarding his attendance. The warning was prompted by the fact that he was 45 minutes late to work that day. The warning recited the fact that his attendance had become unacceptable since he moved away from home. The human resources manager had verbally warned him on several occasions about his attendance prior to the written warning. The written warning advised that he could be discharged if there were further attendance issues. The decision to discharge was triggered by his tardiness of August 16. He was 20 minutes late and was, therefore, discharged at that time. Attendance was the sole reason for the discharge.

Since his separation from Hy-Vee, Inc., Mr. Pepper has earned over ten times his weekly benefit amount in insured wages. The re-qualifying wages were earned during the fourth calendar quarter of 2010. He filed a claim for job insurance benefits effective March 6, 2011.

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). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Pepper had been verbally warned prior to August 12, 2010 that his attendance was jeopardizing his continued employment. In spite of the warnings, he was late due to oversleeping on August 12. The tardiness is unexcused as oversleeping does not constitute reasonable grounds for missing time from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Pepper was clearly on notice as of August 12 that he might be discharged if he continued to report to work late. Yet, he was late again on August 16. The tardiness is unexcused, as the evidence does not establish any reasonable cause for it.

Mr. Pepper had two periods of unexcused absenteeism during a period of less than one week and after several verbal warnings. The administrative law judge concludes that this is sufficient to establish a substantial disregard of the standards the employer had the right to expect. As such, the separation of August 16, 2010 was a disqualifying event. No overpayment results from this reversal of the prior allowance, as no benefits have been paid on the claim.

Mr. Pepper has earned at least ten times his weekly benefit amount in insured wages since leaving Hy-Vee, Inc. Therefore, he has requalified for benefits. No benefits paid to him as a result of the decision herein will be charged to Hy-Vee, Inc.

DECISION:

The representative's decision dated April 11, 2011, reference 02, is hereby modified. Mr. Pepper was discharged by Hy-Vee, Inc. for disqualifying misconduct. He had, however, requalified for benefits as of the date he filed his claim effective March 6, 2011. Benefits are allowed, provided he is otherwise eligible, but shall not be charged to Hy-Vee, Inc.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw