

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA M MOTSCH
Claimant

APPEAL NO. 13A-UI-03411-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 14, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 18, 2013. Claimant participated. Employer participated through store director, Nate Fehl and meat clerk, Teresa Hodges and was represented by John Fiorelli of Corporate Cost Control. Employer's Exhibit 1 (pages 2 – 8) was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a seafood clerk from 2008 and was separated from employment on February 23, 2013. On February 22 she yelled at Hodges about answering her page on the sales floor in front of customers. She asked for a transfer because of this incident and the employer investigated. (Employer's Exhibit 1, pp. 5 - 8) Fehl reviewed the video-only camera feed and saw the two witnesses, but not Hodges. He was able to see claimant walking quickly. She had been warned in writing on November 12, 2012 about losing her temper and yelling at meat clerk, Bruce Loy on the sales floor in front of a customer. (Employer's Exhibit 1, p. 4) Employee Justin Brown who argued with manager Mike Wilson in June 2012 remains employed because both agreed there was no physical interaction as confirmed by Fehl's review of the pertinent camera feed and neither had any further similar issues.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Given the past similar behavior and corroborating witnesses' statement, the employer's evidence is credible. Claimant's yelling at a coworker after having been warned is evidence of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The March 14, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css