

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME A JACKSON
Claimant

APPEAL NO. 08A-UI-09267-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/07/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jerome Jackson (employer) appealed a representative's October 2, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 28, 2008. The claimant participated in the hearing. Barbara Frazier Lehl of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from three witnesses, Julie McPartland, Eric Franz, and Justin Brewer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 31, 2006. As of about August 25, 2008, he worked full time as a night stocker at the employer's Ames, Iowa store. His last day of work was September 1, 2008. The employer discharged him on September 4, 2008. The stated reason for the discharge was unbecoming conduct in violating the employer's policies.

The claimant had received the employer's store's policies, which provide in part that termination could result from "[d]rinking alcoholic beverages ... prior to entering or while at the store whether you are on the clock or not." On the night of September 2, the claimant had made two trips into the store; during the first trip, he purchased some beer, which he then took to his apartment a couple blocks away. He consumed at least one beer. A short while later he realized he had not gotten cigarettes and returned to the store. Before entering the store, he saw a coworker, Mr. Brewer, outside taking a break. He approached Mr. Brewer and a disagreement ensued regarding Mr. Brewer's defense of another coworker with whom the claimant had problems. After a brief argument, Mr. Brewer sought to return to the store and get away from the claimant; as he walked away, the claimant caught Mr. Brewer's shirt with his hand and the collar tore.

Mr. Brewer came into the store and told his brother, Mr. Franz, the assistant night stock clerk, of the difficulty he was having with the claimant. Mr. Franz then approached the claimant, who was in line at a check out register, and told him to leave the store. When the claimant refused, a further argument ensued, with Mr. Franz initially threatening to and subsequently actually calling law enforcement. During this interim, there was some pushing between the claimant and Mr. Franz, with the claimant ultimately being pushed to the ground. Law enforcement arrived, no charges were filed, and the claimant left. However, as a result of the incident, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 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 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 that 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. 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While off-duty, off-premises conduct is usually not grounds to find work-connected misconduct, the conduct in this case was "work-connected" due to it being on the premises and due to the employer's policies. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The events of this case prove the nexus between the employer's policy and the employer's interests – the employer had a valid concern that allowing an employee to enter the premises after having consumed alcohol, even when off-duty, has some greater likelihood in resulting in problems between the off-duty employee and other employees who are on-duty. The claimant did reenter the employer's premises after consuming alcohol despite being aware of the employer's policy, and problems did ensue. The claimant's actions shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 2, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 4, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw