

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRAD A JARNAGIN
Claimant

APPEAL NO: 07A-UI-05695-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/13/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's May 31, 2007 decision (reference 01) that concluded Brad A. Jarnagin (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2007. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Randy Beimer and Rick Boney. 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:

After a prior period of employment with the employer, the claimant most recently started working for the employer on August 15, 2006. As of February 22, 2007 he worked full time as a second assistant manager in the employer's West Des Moines, Iowa store. His last day of work was May 16, 2007. The employer discharged him on May 17, 2007. The reason asserted for the discharge was dishonesty and admitted drug use.

On May 14 the claimant was scheduled for work but was unable to report as he had been arrested at home on a charge of domestic assault as well as possession of marijuana. He was able to contact his mother to ask her to call in an absence to the employer. She did so, but did not report the specific reason for the absence. However, the employer learned of the arrest and charges from other sources. When the claimant was released he met with Mr. Beimer on May 16. He explained to Mr. Beimer that the reason for the absence was that he had been arrested on a charge of domestic assault. Mr. Beimer asked if there were any other charges, and the claimant initially answered no. When Mr. Beimer then inquired if there was a charge of possession of marijuana, the claimant acknowledged there was. Mr. Beimer then asked if the claimant used marijuana, and the claimant acknowledged that he had occasionally used marijuana with his wife. Based upon the claimant's initial untrue answer that there was not any

other charge than the domestic assault and his admission that he had on occasion consumed marijuana, the employer determined to discharge the claimant.

The employer's policies of which the claimant was on notice prohibit dishonesty and the possession, use, or being under the influence of drugs while on the job or on the premises. The claimant asserted that the reason he had initially answered no as to whether there were other charges were that he viewed the marijuana charge as less significant and there was less of a reason for him to discuss it with the employer.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his untrue answer regarding the possession charge and his acknowledgement of occasional marijuana use with his wife. The employer’s policies regarding drug possession and use do not extend beyond being on the job or on the premises. The claimant’s admitted off-premises and off-duty use cannot establish work-connected misconduct. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The employer cannot also bootstrap the claimant’s initial failure to report the off-premises, off-duty possession charge on the grounds of “dishonesty” – in the context of this case, the “dishonesty” prohibited by the employer must also be in a work-connected setting, rather than a failure to report a detail about a non-work-related arrest. While the employer had an understandable business reason for determining to discharge the claimant, the employer has not met its burden to show disqualifying work-connected misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s May 31, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs