

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL H SMITH
Claimant

APPEAL NO: 10A-UI-12855-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/25/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 9, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Tim Speir represented the employer. Brett Kraemer, the department manager, and Paul Johnson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concluded the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a part-time clerk in the meat department. Kraemer supervised the claimant.

During his employment, the claimant received verbal and written warnings. In November 2009, the claimant received a written warning for walking off the job after he became upset. In mid-February 2010, the claimant received a written warning for going to a bar at night when he had called in sick that day for work. On April 4, the claimant called the employer to report he would be late for work. The claimant was scheduled to start work at 2:00 p.m. The employer told the claimant to stay home on April 4.

On May 10, the claimant asked Kraemer for more scheduled hours. Kraemer asked if he could work more hours on May 12 from 11:00 a.m. to 7:00 p.m. After the claimant told Kramer he could work those hours, the claimant was scheduled for additional hours on May 12. When the claimant did not report to work on May 12, the employer called him at 11:30 p.m. to see if he needed a ride to work. The claimant did not answer his phone. The claimant did not call or report to work on May 12.

The claimant called the employer on May 13 and indicated he had been out-of-town. The claimant then explained that he had forgotten about working on May 12. The employer discharged the claimant for again violating the employer's attendance policy.

The claimant established a claim for benefits during the week of July 25, 2010. He has filed for and received benefits since July 25, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's failure to report to work on May 12 after he asked the employer for more hours and told the employer he could work on May 12, amounts to an intentional and substantial disregard of the employer's interests. The evidence does not establish that the claimant had justifiable reasons for not calling or reporting to work on May 12. The employer established that the claimant was discharged for work-connected misconduct. As of July 25, 2010, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since July 25, 2010, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's September 9, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2010. This disqualification continues until he 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css