

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DENNY D KUHLERS
Claimant

APPEAL NO. 19A-UI-04273-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/14/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Denny Kuhlert (claimant) appealed a representative's May 8, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2019. The claimant participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Cameron Olson, Store Director; Nathan Schmitz, Human Resource Manager; and Dan Kruse, Meat Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 4, 2011, and at the end of his employment he was working as a full-time assistant department manager in the meat department. He signed for receipt of the employer's policies and was trained on food safety procedures. The claimant understood there had to be a barrier between his hand and raw meat. He chose to use deli plastic rather than wear plastic gloves. The meat manager saw this and never reprimanded the claimant. The claimant also understood that waxed paper should be placed as a barrier on the scale between the meat and the scale.

On December 28, 2018, the employer talked to the claimant about a customer complaint regarding sanitation issues. The claimant was weighing multiple beef roasts of the same cut for the customer and did not put a barrier between the scale and the meat. The claimant thought because the scale was clean, no barrier was needed. The store manager warned the claimant that further infractions could result in his termination. The claimant was shown a copy but not given a copy or asked to sign a copy of a written warning. After this date, the claimant thinks he may have always placed a barrier between the meat product and the scale. If he perceived the scale to be clean, he did not think a barrier was necessary. The scale was cleaned every three or four hours.

On February 27, 2019, the store manager met with the claimant for a yearly review. The two were scheduled for another meeting on April 1, 2019, to discuss a raise for the claimant but the store manager was out of town.

On April 11, 2019, the employer terminated the claimant because it received two customer complaints regarding the claimant. The first complaint involved a situation on April 5, 2019, where the claimant was preparing a customer's order who had stepped away from the counter momentarily when a second customer approached the meat counter. The claimant directed a part-time worker to help the second customer. The second customer called the employer, complained that the claimant would not wait on him, and told someone else to attend to the him.

The second complaint occurred on an unknown date. The customer said the claimant did not wipe down the scale or put a waxed paper barrier on the scale before placing the meat product on the scale. The employer gave the claimant copies of three warnings from December 28, 2018, April 5, 2019, and April 11, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 8, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs