

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAUNCEY W BAILEY
Claimant

APPEAL NO. 07A-UI-09342-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/02/07 R: 02
Claimant: Respondent (2)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated September 27, 2007, reference 01. The decision allowed benefits to the claimant, Chauncey Bailey. After due notice was issued a hearing was held by telephone conference call on October 18, 2007, and concluded on October 31, 2007. The claimant participated on his own behalf. The employer participated by Manager of General Merchandise Darin Casey, Cashier Renicka Carter and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Chauncey Bailey was employed by Hy-Vee from January 28, 2002 until September 6, 2007, as a part-time stocker/clerk. On August 31, 2007, the claimant was sacking at the checkout line of Cashier Renicka Carter. She asked him to “speed up.” He allegedly said he was “trying to impress her” because she was “making [him] warm in the pants.”

Some time later another cashier, Tuscarora Ambrose, saw the claimant crying and when Ms. Carter reported what had happened, Ms. Ambrose said Mr. Bailey had “done the same thing to [her].” The matter was reported to Store Director Chris Dessalines who interviewed the claimant about the complaint on September 6, 2007, the next time he was scheduled to work. He also interviewed Ms. Carter and Ms. Ambrose. The latter said Mr. Bailey had called her “Miss Fine” and said he wished he was younger, which she took to imply that he would want to date her.

Mr. Bailey denied making any such statements to Ms. Carter and acknowledged he called Ms. Ambrose “fine” as he considered this to be a compliment. The employer’s decision was based on Ms. Carter’s obvious state of anxiety and the corroborating statements from Ms. Ambrose. He was discharged for violation of the employer’s harassment policy.

Chauncey Bailey has received unemployment benefits since filing a claim with an effective date of September 2, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant was discharged for making an inappropriate comment to a female co-worker. The employer has presented firsthand testimony regarding the incident as well as corroborating testimony from the investigating manager. The claimant has not provided any reasonable explanation as to why Ms. Carter and Ms. Ambrose would conspire to fabricate the accusations against him. He did state he believed it was because of his age but did not explain why that would prompt the accusation and the administrative law judge does not find there to be any connection. The claimant was discharged for creating a hostile work environment. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department

in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of September 27, 2007, reference 01, is reversed. Chauncey Bailey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$882.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css