

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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HY-VEE INC
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HY-VEE INC
c/o TALX UC EXPRESS
4100 HUBBELL #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-03251-DWT
OC 02/15/04 R 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's March 15, 2004 decision (reference 01) that concluded Jason M. Walters (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. David Williams, a representative with TALX, appeared on the employer's behalf with Electa Richards, a night cashier, and Mike Auderer, the store director, as witnesses. Marla Jentry observed the hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer as a part-time night stocker on August 4, 2003. Prior to February 16, 2004, the claimant's job was not in jeopardy.

On February 16, 2004, the claimant was facing an aisle. Richards worked that evening. She started talking to the claimant when she took a product, a customer had not wanted, back to the area the claimant was working to put it back on the shelf. Initially, Richards and the claimant had a normal conversation. The claimant, however, had problems getting boxes of pop tarts on the shelves. He appeared to get frustrated. Without warning the claimant became very upset, stood up and kicked a group of pop tarts with his foot. The product flew into the air with such force several boxes hit Richards at various places on her body with enough force that she ended up with some bruising. The claimant immediately told Richards he was sorry. Richards was shocked by this event and left to help a customer.

A short time later, Richards approached the claimant again to tell him she would put the pop tarts on the shelves if it bothered him so much. With the use of the F word, the claimant told her to leave him alone. He then threw another box of pop tarts at her. This time nothing hit Richards.

Auderer learned about the incident the next morning. When Auderer investigated the incident, he learned the claimant appeared to have an anger control issue that had surfaced in the claimant's previous employment with another employer.

On February 19, 2004, the employer discharged the claimant because he became angry at work and took his anger out on another employee on February 16, 2004.

The claimant established a claim for unemployment insurance benefits during the week of February 15, 2004. He filed claims for the weeks ending February 21 through March 20, 2004. He received his maximum weekly benefit amount of \$78.00 during each of these weeks.

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 first time the claimant lost control of his temper and kicked a box of pop tarts, which hit Richards, could be considered an isolated hotheaded incident or extremely poor judgment. A short time later when Richards came back to offer the claimant assistance, the claimant had an opportunity to calm down. Instead, of thanking Richards for her help and declining her offer, the claimant used profanity and told her to get away from him. He then deliberately picked up another box of pop tarts and threw them at her. Even though the claimant did not hit her a second time with the pop tarts, this second incident rises to the level of work-connected misconduct. The way in which the claimant talked to and treated Richards when she came back to help him amounts to an intentional and substantial disregard of the standard of behavior the employer and a co-worker has a right to expect from an employee. Therefore as of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 21 through March 20, 2004. The claimant has been overpaid a total of \$390.00 in benefits he received for these weeks.

DECISION:

The representative's March 15, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. 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 claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 21 through March 20, 2004. The claimant has been overpaid a total of \$390.00 in benefits he receive for these week.

dlw/kjf