

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMIL ZONIC
Claimant

APPEAL NO. 07A-UI-10225-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/30/07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated November 1, 2007, reference 02, which held that no disqualification would be imposed regarding Camil Zonic's separation from employment. After due notice was issued, a hearing was held by telephone on November 29, 2007. Mr. Zonic participated personally. The employer participated by Stacy Sasman, Human Resources Manager; Mary Dale, Assistant Night Stock Manager; Mike Snook, Night Stock Manager; Jeff Suchomel, Store Director; and by Reese Smalley and Chris Heise, Night Stockers. The employer was represented by David Williams of Talx Corporation. Zijo Suceska participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Zonic was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Zonic was employed by Hy-Vee, Inc. from October 18, 2004 until October 3, 2007. He worked from 30 to 40 hours each week as a night stocker. He was discharged for creating what the employer felt was a hostile working environment.

Chris Heise, one of Mr. Zonic's coworkers, complained to her manager on or about September 30 that she felt Mr. Zonic was making inappropriate comments to or about her. She did not know what he was saying because he was speaking in Bosnian, his native language. Comments were made to her by him in Bosnian on a frequent basis as she passed him at work. The manager, Mike Snook, was having a conversation with Reese Smalley concerning Ms. Heise's complaint. Mr. Smalley indicated he had asked Mr. Zonic on one occasion what he said to Ms. Heise and was told by Mr. Zonic that he called her a "big fat pig." As a result, Mr. Zonic was discharged on October 3, 2007. The above matter was the sole reason for the separation.

Mr. Zonic filed a claim for job insurance benefits effective September 30, 2007. He has received a total of \$1,425.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Zonic was discharged after he referred to Ms. Heise as a "big fat pig." It is true that Ms. Heise did not know what he was saying because she does not know the Bosnian language. However, Mr. Zonic translated his statement to others at the workplace.

Mr. Zonic's statement to Ms. Heise was not merely name-calling, it was a comment disparaging of her personally. Because it was translated by Mr. Zonic for the benefit of others, it had the potential of causing her embarrassment in front of her peers. Mr. Zonic knew or should have known that such conduct was inappropriate in the workplace. The administrative law judge appreciates that it is unreasonable to expect employees to be docile and well-mannered at all times. However, there is a difference between letting off steam during a heated exchange with a coworker and making a derogatory, unprovoked comment about a coworker. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Zonic has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated November 1, 2007, reference 02, is hereby reversed. Mr. Zonic was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Zonic has been overpaid \$1,425.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs