

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSIE D LEIDAL
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-08720-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/24/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jessie D. Leidal (claimant) filed an appeal from the August 8, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on August 29, 2016. The claimant participated personally. The employer participated through Human Resources Manager Sheena Murray, Store Director Ina Cavin, Manager of Perishables Larry Knowles, Assistant Manager Jayden Mineart, and Cashier Holly Bradbury. It was represented by Julia Day of Corporate Cost Control, Inc. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds that the facts of this case are largely uncontested. The claimant was employed full-time as an Assistant Manager beginning on July 12, 2004, and was separated from employment on July 24, 2016, when he was discharged. The employer had policies related to appropriate and professional conduct by all employees and members of management.

The claimant had ongoing issues with professional conduct for which Cavin had spoken to him on multiple occasions. On July 10, 2016, the claimant had told Cashier Holly Bradbury that he was moving her to another cash register because he wanted someone younger on her register. Bradbury reported the incident and Cavin spoke to the claimant about professional conduct.

On July 23, 2016, a cashier reported the claimant had told her that the \$20.00 a customer had laid on the counter would be a good tip for her if she "got up on the counter" and then said, "you know what I mean," while laughing. (Employer's Exhibit 1.) She reported to Cavin that this comment made her uncomfortable. Cavin spent approximately 30 minutes in the office with the claimant counseling him on appropriate conduct and told him that further incidents would not be tolerated.

On the morning of July 24, 2016, Assistant Manager Jayden Mineart was assisting the Coca-Cola vendor, but needed a key that the claimant had in his possession. She paged him multiple times. He arrived after approximately five minutes. She asked him for the key and he said, "You know what fuck you!" while on the sales floor and in front of the vendor. (Employer's Exhibit 1.) He then proceeded to assist the vendor. Mineart informed Store Manager Ina Cavin about the incident. Cavin asked Manager of Perishables Larry Knowles and the claimant to the office. Cavin asked the claimant about the incident and he acknowledged he had used profanity toward his co-worker. Cavin made the decision to discharge the claimant's employment as a result of that incident and his previous warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits based upon wages credited from this employer's account are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

"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.

Iowa Admin. Code r. 871-24.32(1)a. 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The claimant used profanity towards a co-worker while on the sales floor in front of a vendor. This is indicative of a deliberate disregard of the employer's interests and is disqualifying without prior warning. However, the employer has presented substantial and credible evidence that the claimant continued to make unprofessional statements towards others after having been warned. The employer has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are denied.

DECISION:

The August 8, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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