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

RALPH T ANDERSON
5483 LONGVIEW ST #5
JOHNSTON IA 50131

HY-VEE INC
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-06163-SWT
OC: 05/21/06 R: 02
Claimant: Respondent (1)

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 is 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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 12, 2006, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 6, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses, Tim Wood and Craig Clausen.

FINDINGS OF FACT:

The claimant worked full time for the employer as a pharmaceutical delivery person from September 29, 2004, to May 24, 2006. His supervisor was the manager of delivery services, Tim Wood.

In May 2006, the claimant's route consisted of making deliveries from the Des Moines area to Chariton, Corydon, Centerville, Albia, Ottumwa, and Bloomfield and then returning to the Des Moines. The established starting time for the route was 4:30 p.m., but the claimant often had to wait until the orders were ready and loaded on the vehicle and did not get started on his route until much later than 4:30 p.m. The stops were not required to be made in any particular order, and the claimant varied the order of stops depending on the needs of the customer and other factors.

The claimant's grandson was scheduled to pitch in a baseball game in Ottumwa starting at 8:00 p.m. on May 24. On May 23, the claimant asked Wood whether he could stop and attend the game before returning to Des Moines. He had been allowed to attend games in the Des Moines area before returning to the truck to the warehouse in the past, with the requirement that he notify the employer so that time was deducted from his time sheet for the time spent at the game. Wood told the claimant that he would have to complete his deliveries before attending the game. Wood suggested that the claimant finish his route in Albia and then go back to Ottumwa for the game.

The claimant was not able to leave Des Moines to start his route until after 5:45 p.m. He knew that with his late start, he would not be able to watch his grandson's game. He delivered to Chariton, Corydon, Centerville, Albia, Ottumwa, and Bloomfield. Before he made his delivery to the Ottumwa, he took a break and stopped at the ballpark for a short time to tell his grandson that he was not able to attend the game. He picked up a hot dog to eat, ate the hot dog, and then left to complete his route. The claimant was entitled to take a break during his work shift and did not abuse his break. The claimant did not return to the warehouse until about 1:00 a.m.

Wood had been tracking the claimant with a cellular phone global positioning system. He was convinced that the claimant had disobeyed his directions and had attended his grandson's ball game before he finished his deliveries. When the claimant returned to the warehouse, Wood discharged him for insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he stopped at the ballpark for a short period of time while he was in Ottumwa to tell his grandson that he would not be able to stay for the game while he was on a break to get something to eat. The timeline presented by the employer is not inconsistent with this. The employer tracked the claimant about eight miles south of Albia at 8:32. This would mean that he would have arrived at the Albia facility perhaps around 8:45 or later. Assuming he spent at least 20 minutes there, it would be sometime after 9:00 p.m. before he was back on the road to Ottumwa. While the road distance is 21 miles to Ottumwa, depending on the claimant's speed, it could take somewhat longer than 20 minutes to get there, which puts the claimant in town around 9:30 p.m. The only evidence the employer had is that the claimant was at the Ottumwa facility at 10:20 p.m. and a nurse there said she got the delivery at about 10:25 p.m. This does not mean the claimant arrived at the facility at 10:20 p.m.; it could have been earlier than that. At most, the employer has established the claimant perhaps took a little longer than a 20-minute break. Since the claimant did not stay to watch his grandson's game, he was not insubordinate toward Wood. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 12, 2006, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs