

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W MILLER
Claimant

APPEAL NO. 13A-UI-13920-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 12/01/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 17, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on January 13, 2014. Claimant participated. Employer did participate through Traci McKoon, Human Resources Manager; Dave Beach, Store Director; and Chris Gordy, Manager of Perishables and was represented by Tim Rooney, of Corporate Cost Control. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a checker/stocker beginning on May 17, 2012 through November 25, 2013 when he was discharged. When he was hired the claimant was given a copy of the employer's policies and code of conduct which put him on notice that threat of physical violence against coworkers or violence against coworkers could lead to his discharge.

On the evening of November 22 the claimant was not working but returned to the employee parking lot to watch and see what another employee, Rachel McKoon, did when she left the store. Ms. McKoon left the store with another employee, Andrew G. They walked to their cars and while Andrew scrapped ice off his car the claimant sat in his car while hers warmed up. The claimant approached Andrew's car, kicked the bumper, kicked the side door and called Ms. McKoon a "f**king, cheating, bitch." The claimant then threatened to "beat the sh*t out of" Andrew. Ms. McKoon reported the incident to her mother, who is the human resources director who reported it to the store director, Dave Beach.

On Monday November 25 Mr. Beach met with the claimant along with Chris Gordy to discuss the events of November 22. During the meeting the claimant admitted that he had kicked Andrew's car, and had used profanity when speaking to Ms. McKoon and had threatened Andrew. The claimant was angry because Ms. McKoon had broken up with him.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew or should have known that his conduct was not in the employer's best interest. He violated the employer's policies in their parking lot. Losing one's temper over a break-up does not allow an employee to call another employee vile profane names or to threaten harm to another employee or to physically kick an employee's car. The claimant's actions are sufficient misconduct that disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 17, 2013, (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs