

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VINCENT CHANG
Claimant

HY-VEE INC
Employer

APPEAL 18A-UI-06486-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/13/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Vincent Chang (claimant) filed an appeal from the June 11, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged him for fighting on the job. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa on June 26, 2018 at 3:00 p.m. The claimant participated personally. The employer was represented by Barbara Buss of Corporate Cost Control, Inc. and participated via telephone through Store Director Todd Robertson, Loss Prevention Supervisor Scott Foughty, and Cook Kyong Ae Smith. Kathy Hrubetz was sworn in as an employer witness but did not testify. Mandarin interpretation was provided by Haihong (employee number 10147) from CTS Language Link. The Claimant's Exhibit A and Employer's Exhibit 1 were admitted without objection.

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: The claimant has worked for the employer for the last nine years. He was most recently employed full-time as the Asian Department Manager beginning on March 13, 2017 at the Mason City, Iowa location, and was separated from employment on March 2, 2018, when he was discharged. The claimant's brother Simon worked as a Cook in the Asian Department and reported directly to the claimant. The employer has a rule that prohibits fighting and states any violation may result in discharge.

On March 1, 2018, Simon came into work to check his schedule. He was not in his work uniform. The claimant was working by himself and ordered Simon to leave. Simon refused to listen to the claimant. The claimant became angry and picked up a long fork which resembles a carving fork and is used to separate rice. He waived the fork at Simon and demanded he leave. Cook Kyong Ae Smith approached the two as customers could hear them arguing and she was scared they were going to hurt each other or someone else. She finally convinced Simon to leave while another employee took the fork away from the claimant and held him back.

The incident was reported to Store Director Todd Robertson. He took witness statements from the other employees involved. Simon and the claimant were yelling at each other in Mandarin. Simon, the only one who understood what the claimant was yelling, reported that the claimant threatened to kill him.

On March 2, 2018, Robertson asked the claimant about the incident. Initially, the claimant denied the incident occurred. He then acknowledged threatening Simon with the fork but denied threatening to kill him. The claimant was discharged for violation of the employer's policy regarding fighting.

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 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 Administrative Code rule 871-24.32(1)a provides:

“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 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). 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).

Employers generally have an interest in protecting the safety of all its employees and invitees. The employer also has a reasonable expectation that employees will act with civility at work. The claimant threatening a subordinate employee, even if he is a family member, in anger with a sharp kitchen utensil, is a deliberate disregard of the employer's interests and the reasonable

standards of behavior an employer has a right to expect from an employee. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

DECISION:

The June 11, 2018, 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

src/scn