

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON J VANDE NOORD
Claimant

APPEAL NO. 08A-UI-05731-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/25/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 18, 2008, reference 01, which denied benefits based upon his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on July 8, 2008. Mr. Vande Noord participated personally. The employer participated by Tim Speir, Representative, and Witness Mark Cortis, Store Director. Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 2004 until May 19, 2008 when he was discharged. Mr. Vande Noord held the position of overnight cashier/stocker. He was employed on a full-time basis and was paid by the hour.

The claimant was discharged after making an inappropriate statement with sexual connotations to a female patron who was purchasing a jar of petroleum products on or about the night of May 17, 2008. The female customer and another woman who accompanied her were angered and embarrassed at Mr. Vande Noord's comment. The customer's husband was informed of the claimant's statement and immediately entered the store to complain and threaten legal action. Mr. Vande Noord who was the senior employee on duty that night took the complaint but did not personally forward it to the store director. Upon being made aware of the incident by another store worker as well as the patron's husband, the matter was investigated and a decision was made to terminate Mr. Vande Noord. The customer had also alleged that the claimant had in the past made inappropriate statements to her.

It is the claimant's position that he made the comment in a joking manner and did not anticipate a negative reaction by the female patron.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Vande Noord was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that Mr. Vande Noord made an inappropriate comment with a sexual connotation to a female patron who was purchasing a petroleum product. The evidence clearly establishes that the claimant's conduct angered and embarrassed the female patron who in turn complained to her husband. The matter was brought to the attention of both Mr. Vande Noord and company management by the patron's husband who was not only angry at Mr. Vande Noord's comments but also threatened legal action.

Although the administrative law judge is aware that the claimant contends that the comment was made in a joking manner, the administrative law judge concludes that the claimant knew or should have known that making a statement with sexual connotations to a female patron was clearly contrary to the interests and standards of behavior of Hy-Vee, Inc. and thus was in violation of the employer's reasonable standards of behavior that it had a right to expect of its employees under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 18, 2008, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs