

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DONNA D KLIEGL
Claimant

HY-VEE INC
Employer

APPEAL NO. 18A-UI-08183-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/15/18
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 30, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 17, 2018. Claimant participated personally. Employer participated by hearing representative Sabrina Bentler and witnesses Kelly Nieland, Sherry Cummings and Ann Hamm. Claimant's Exhibit A and Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 9, 2018. Employer discharged claimant on July 9, 2018 because claimant was allegedly treating co-workers in a rude and disrespectful manner after being warned not to do so.

Claimant worked as a part-time clerk in the floral department for employer. During her tenure, claimant received multiple warnings from employer for her interactions with her supervisor and fellow employees. Claimant's last, most recent act that led to her termination occurred on July 2, 2018 when claimant was working with a new employee in the floral area. The other employee had been working with a customer and was moving to check out the customer when claimant grabbed the flowers the co-worker had been holding and told the co-worker to go work on cardboard. This embarrassed and humiliated the co-worker in front of a customer. Claimant stated that the cardboard was a very pressing issue and it needed to be addressed immediately. Although claimant wasn't a manager, she viewed it as better for everyone that she checkout the parties and have claimant work on the piling up cardboard.

The co-worker expressed her frustration to management a few days later and management decided to terminate claimant as she'd been repeatedly warned concerning her dealings with co-workers.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning respectful treatment of her co-workers. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was informed on multiple occasions that she needed to improve her relations and respect for co-workers and her manager. Claimant's action as an isolated incident would likely not have risen to the point of misconduct on its own accord. But claimant had been warned one week before the last incident that her creating conflicts with her co-workers would be a reason for her immediate termination were it to occur again. Claimant then created conflict and poor feelings from a co-worker because she was not willing to let her co-worker go about her job without yanking her from a customer to do a job that did not immediately need to be done. As claimant was not a manager or supervisor over her co-worker, her actions were improper, and in light of previous warnings, constituted misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 30, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn