

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

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HY-VEE INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04843-LT
OC: 03-26-06 R: 04
Claimant: Appellant (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)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 2, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 22, 2006. Claimant participated. Employer participated through Brian Mitchel; Doug Dop, store director; and was represented by David Williams of TALX UC eXpress. Sarah Lloyd observed. Claimant forwarded documents she noted she did not wish employer to see, thus, the documents are not part of the record and are not considered in making this decision.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time kitchen clerk from July 21, 2003 through March 24, 2006, when she was discharged. On March 24 claimant called a meeting with Brian Mitchel and Sherry

Marshall, kitchen manager, and she continued to complain about past problems that had been fixed after she acknowledged they had been resolved.

She alleged abuse by denial of breaks from a former kitchen manager who left a year ago and complained that the assistant kitchen manager has to sit down to take his insulin leaving her with "all the work." On February 28, 2006, claimant complained to Mitchel that she felt she was being harassed by Jim McKinney who allegedly "yelled, cussed, and hit" her. Dop and Marshall met with claimant in early March to discuss that issue and addressed some attendance problems as well. A request for a transfer was denied there as there were no openings in other departments. Mitchel investigated the complaint and interviewed current employees and set up a follow up meeting with claimant. Employees with whom claimant had other problems, Chad and Kurt, no longer work for employer.

During the March 24 meeting, claimant acknowledged that Jim was treating her "better." She claimed Marshall and McKinney made derogatory remarks to claimant but could not think of an example. The meeting lasted over an hour and Marshall became so upset she left the office. Doug Dop, store director, observed this and went into the meeting for the last ten minutes. He asked her if these things had been fixed. Claimant responded yes. Then he asked her why she was rehashing the same issues but she continued to complain. Dop told her at least twice not to bring up the resolved concerns again and finally told her if she continued to complain about them she would be fired. She continued to do so without raising new issues and was fired.

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

An employer is reasonably expected to investigate and address employees' legitimate concerns but is not required to continue to use time and resources to cover the same ground simply because an employee does not like the results. Claimant's relentless rehash of complaints she acknowledged were resolved, or were at least addressed if not in her favor, after being directed not to, was insubordination and is misconduct. Benefits are denied.

DECISION:

The May 2, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/kkf