

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

JASON W ELDER
715 SW 4TH ST
STUART IA 50250

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

TALX UC EXPRESS
4100 HUBBELL AVE #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-08905-CT
OC: 07/18/04 R: 02
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)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Elder filed an appeal from a representative's decision dated August 5, 2004, reference 01, which denied benefits based on his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on September 13, 2004. Mr. Elder participated personally. The employer participated by Rick Boney, Assistant Director; Todd Plum, Market Manager; and Megan Neville, Human Resources Coordinator. The employer was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Elder was employed by Hy-Vee, Inc. from August 1996

until April 2, 2004. He was last employed part time in the meat department working approximately 16 hours each week. On February 6, 2004, Mr. Elder was suspended for one week because of comments he made to a coworker, Jose Olivera. He asked Mr. Olivera what country he was from and when he was going back to his country. The employer felt the questions were asked not out of curiosity but because of a dislike of working with individuals of different ethnic backgrounds. This conclusion was based, in part, on the fact that the employer had observed Mr. Elder treat customers of different ethnic backgrounds differently than he treated others. Mr. Elder was warned that further incidents of such conduct could result in his discharge.

The decision to discharge Mr. Elder was due to the fact that Jesse Navara complained to management about him on March 29, 2004. Mr. Elder had referred to him as a "foreigner" on some occasions. He had also asked Mr. Navara what country he was from and when he was going back to his own country. The comments were made because Mr. Elder did not feel Mr. Navara was doing his fair share of the work. As a result of these comments, Mr. Elder was discharged on April 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Elder was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Elder was discharged because of comments he made to coworkers. The questions he asked Mr. Olivera and Mr. Navara were innocent ones if he was simply asking questions of coworkers because he was curious about their backgrounds. However, in the context in which they were asked by Mr. Elder, it is apparent that he was suggesting that they should return to their country of origin. This conclusion is supported by the fact that Mr. Elder referred to at least one of the individuals as a "foreigner." The comments and questions were made at a time when Mr. Elder was upset or angry about the productivity of Mr. Olivera and Mr. Navara.

Mr. Elder had been warned on February 6, 2004, that his questions to Mr. Olivera were inappropriate in the workplace and that further conduct of that same nature could result in his discharge. His conduct had the potential of subjecting the employer to claims of racial or ethnic discrimination. Mr. Elder's conduct, in light of his prior warning, constituted a substantial disregard of the standards the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 5, 2004, reference 01, is hereby affirmed. Mr. Elder was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/b