

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRONSON R CARRE**  
Claimant

**APPEAL NO. 09A-UI-11262-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07-05-09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 10, 2009 in Des Moines, Iowa. Claimant did participate along with his witness Bobbi Rissman. Employer did participate through Katie Gemaehlich, Manager of Perishables, Rusti Subject, Assistant Manager of Store Operations, and Ryan Roberts, Store Director and was represented by Daniel E. Speir, Attorney at Law who participated via telephone. Employer's Exhibits One through Three were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a deli clerk part time beginning October 9, 2008 through May 25, 2009 when he was discharged.

On May 22 the claimant was told by Katie Gemaehlich that he had to get his hair cut above his collar before he worked his next shift on May 25. The claimant had been told on previous occasions that the company policy required he have his hair cut above his collar. At hearing the claimant admitted that in the fall of 2008 after he had been hired he had been instructed to get a haircut as his hair had to be shorter than the collar of his uniform shirt. On at least one prior occasion in the fall of 2008 the claimant had gotten a hair cut after being told to do so by a manager because his hair was below his collar. The claimant knew in May 2009 that the company policy required him to have his hair cut above his collar.

When the claimant arrived at work on May 25 he had his head covered by a tight black nylon cap that did not show the length of his hair. Over the black nylon cap he was wearing the usual Hy-Vee baseball cap that food service employees wear. He was not required to wear the black nylon cap as part of his job uniform and had not worn it before. Ms. Gemaehlich asked him to

remove the nylon cap so she could ascertain whether he had followed her explicit instructions and had his hair cut above his collar. Ms. Gemaehlich suspected the claimant had not obtained a hair cut because she could see a bulge on the back of his head that appeared as though he had his hair tied up in a pony tail. The claimant had previously worn his hair tied up in a pony tail. The claimant told Ms. Gemaehlich that he had cut his hair and that his word alone should be good enough for her and that he should not have to remove the tight black nylon cap to prove that he had gotten a haircut.

Under the employer's policy a male employee is not allowed to tie up their hair in lieu of having it cut above their collar. The policy requiring that hair be cut above the shirt collar only applies to male employees, not to females.

Ms. Gemaehlich asked the claimant to remove the black nylon cap so she could ascertain if the length of his hair was in compliance with the company policy. The claimant refused to remove his nylon cap and kept insisting that he had cut his hair. Ms. Gemaehlich had the claimant go upstairs to the offices where they met with Rusti Subject. Mr. Subject again reiterated the dress code policy to the claimant and asked him to remove the black nylon cap so that he could ascertain whether the claimant's hair was cut above his collar. The claimant refused Mr. Subject's request that he remove the black nylon cap. When the claimant would not remove his black nylon cap, Mr. Subject and Ms. Gemaehlich sought help from the store director Ryan Roberts. Mr. Roberts read the claimant the dress code policy with regard to length of his hair and told him that all he had to do was remove the black nylon cap, show the employer that his hair had been cut as instructed and he could return to work and the matter would be over. The claimant refused Mr. Roberts' instruction to remove the black nylon cap and continued to argue with him. Mr. Roberts eventually called the police to have the claimant removed from the store. The claimant was discharged for failing to take off his black nylon cap to show the employer that he had his hair cut above his collar.

When the claimant appeared for the in-person hearing, his hair was cut well above his collar, on above his ears in a short traditional male hair cut. The claimant did not wear any head covering at all either into or at the hearing. At the time the claimant was asked to remove the black nylon he did not offer any refusal due to any religious belief. The claimant complained that he was being discriminated against because he was male and the female employees did not have to have their hair cut above their collars and that it was inappropriate for the employer to ask him to remove an article of clothing.

#### **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 § 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.

The claimant's copy of the employer's policy does not say that male employees have to have their hair cut above their collars. The employer established that the policy was changed in March 2008, months before the claimant was hired to include the provision that males hair must be cut above their collars. That the claimant knew the policy was to have his hair cut above his collar is established by his own testimony that he was told in the fall of 2008 to get his hair cut above his collar and did so on at least one occasion. Additionally, the instructions given to him by Ms. Gemaehlich on May 22 were explicit and clear; get his hair cut above his collar. On May 25 the claimant was specifically told by three people that the policy was to have his hair cut above his collar. On May 25 the claimant told the employer that his hair was cut above his collar. If the claimant did not believe that according to the policy he had to have his hair cut above his collar, but merely tied up above his collar, then why would he tell the employer it was cut above his collar? The claimant knew the policy, despite the content of his copy of the handbook.

The claimant knew that he had to get his hair cut above his collar in order to be in compliance with the employer's dress code policy. An employer may have different dress code policies that apply to men and women. There is no per se prohibition against different dress codes for men and women. The claimant had by his own admission on at least one prior occasion gotten his hair cut above his collar after being told to do so under the dress code policy. In other words the claimant had demonstrated an ability to comply with the policy on a prior occasion. Ms. Gemaehlich had explicitly told the claimant three days prior to his discharge that he had to have his hair cut above his collar before his next work shift. Because Ms. Gemaehlich could see a bulge in the back of the claimant's head under a black nylon cap he had not worn before, she suspected he had not cut his hair as instructed. The claimant insisted that he had cut his hair and Ms. Gemaehlich, Mr. Subject and Mr. Roberts were obligated to take his word on it.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The employer simply requested that the claimant remove a black nylon head covering to show that he had cut his hair above his collar. The claimant's allegation that the employer was asking him to remove an article of clothing that would make the inspection

indecent is not credible. The claimant appeared bareheaded for the hearing and at no time did he make any allegation that he had any religious reason for needing his head covered or his hair uncut. There was nothing indecent about the employer requesting the claimant, who had appeared for work bareheaded on prior occasions, remove his cap to show compliance with a known policy. The administrative law judge concludes that the employer's request was reasonable and that the claimant had no good grounds for refusing to remove his cap. The claimant's refusal to remove his cap in conjunction with his continued arguing with the employer about the issue on May 25 are misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The August 5, 2009, reference 01, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs