

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON M WESLEY**  
Claimant

**APPEAL NO. 10A-UI-11054-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10/04/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Brandon M. Wesley (claimant) appealed a representative's July 29, 2010 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 21, 2010. The claimant participated in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from two witnesses, Kelly Nieland and Cody Kerns. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 9, 2008. He worked part-time (20 to 30 hours per week) as a kitchen breakfast cook at the employer's Spencer, Iowa store. His last day of work was June 10, 2010. The employer sent him home that day, suspended him on June 12, and discharged him on June 14, 2010. The stated reason for the discharge was insubordination and inappropriate conduct.

Shortly after 8:00 a.m. on June 10, the claimant and a coworker had a verbal argument in front of customers. As the dispute continued, Ms. Nieland, the human resources manager, and Mr. Kerns, the store assistant manager, arrived on the scene. Ms. Nieland told them they needed to stop arguing and to come to her office. The claimant was initially resistant, but did ultimately follow them to the office. After they had entered the office, Ms. Nieland told the employees she wanted them to calm down and go out and do their jobs and to act like they liked each other. The claimant became further upset and began yelling about this being the coworker's fault. He continued arguing with Ms. Nieland, gesturing by waving his arms around and rising out of his chair, causing Ms. Nieland concern for her safety. She told him several times to stop yelling. When he continued, she told him to go home. He was subsequently discharged because of this incident.

## REASONING AND CONCLUSIONS OF LAW:

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. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 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 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 that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's insubordination toward a manager and his conduct on June 10 shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

## DECISION:

The representative's July 29, 2010 decision (reference 04) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 10, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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