

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANE JOHNSON
Claimant

APPEAL NO: 09A-UI-14970-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 09/13/09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Stephane Johnson (claimant) appealed an unemployment insurance decision dated September 30, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on November 6, 2009. The claimant participated in the hearing with her mother Susan Johnson and friend Becky Kitner in attendance. The employer participated through Tracy Kading, Store Director; Jeremy Low, Manager of Store Operations; Sean Haynes, Night Stock Manager; Adam Pomrehen, Floor Maintenance; and employer representative Tim Speir. Employer Exhibits One through Five and Claimant's Exhibit A were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time night stock clerk from January 13, 2009 through September 13, 2009. She was discharged for repeated insubordination even after being warned. The claimant complained a lot and was often in a bad mood. There were complaints from other employees that they did not want to work with her. She received her first written warning on February 16, 2009 for a bad attitude and poor behavior. Her supervisor spoke with her and she complained that she was working too many hours, since she was also attending school, so her hours were reduced at that time.

A second disciplinary warning was issued to her on March 31, 2009 for a bad attitude and poor work performance. At this time, she complained that she was not getting enough hours but was advised that her performance and attitude had to improve before she was scheduled for more hours. She received a third written warning on May 18, 2009 for a poor attitude and

complaining about things. The claimant felt her supervisor was treating her differently than other employees. A fourth and final written warning was given to her on May 22, 2009. The claimant complained, had “tantrums”, and threw stuff around in the aisles while unloading. She also kicked boxes and upset her co-workers so much so that no one wanted to work with her. The employer advised her that her job was in serious jeopardy and that more “attitude” or “performance mishap” would result in termination. The claimant signed all four disciplinary warnings.

On the evening of September 12, 2009, the claimant reported to work with an angry attitude. She complained to her supervisor about how some things were being done and wanted to do things her way. The supervisor agreed to let her try it but said if it did not work, then they would resume the previous practices. The claimant apparently “back peddled” at that point and stated that it would take a while to do things differently. The supervisor walked away to take care of other matters and Adam Pomrehen saw the claimant raise her middle finger to her supervisor’s back. Mr. Pomrehen is responsible for floor maintenance and was working where he could see the claimant. He got along well with her and had never previously had any problems. However, he believed her conduct was inappropriate so reported it to the claimant’s supervisor. The claimant was sent home and discharged on the following day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on September 13, 2009 for repeated insubordination after being warned. She acknowledges she received four written warnings prior to her discharge but argues that she never raised her middle finger to her supervisor's back on September 12, 2009. She contends that Mr. Pomrehen was fabricating his story but does admit that she raised a fist to her supervisor's back. However, she testified that she was merely doing that out of frustration. Mr. Pomrehen's testimony is found more credible since he had no reason to report something like this unless he had seen it. It appears the employer has been quite reasonable with the claimant but her behavior had not changed. The employer has a duty to provide a workplace free from conflict and it could no longer do that while the claimant was employed there. Her behavior 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 30, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs