

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY J EASTRIDGE
Claimant

APPEAL NO. 10A-UI-14528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/12/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 11, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Kenneth Carp represented the employer. Stacie Nichols, Deb Courtney, and Joey Hayes appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2003. She worked as a full-time Caribou assistant manager. Courtney managed Caribou and supervised the claimant.

On September 11, 2010, the claimant was working when an employee called to let the employer know she was unable to open the next day as scheduled. The claimant sent Courtney a text message about the problem with covering the shifts the next day. The claimant indicated that she could not work the morning shift and did not know who could, because another employee who had indicated they could work the morning shift did not feel well. Courtney was on her way out of town and assumed the claimant would find someone to work the first shift the next morning. Courtney did not specifically tell the claimant to make sure someone was working the next morning. The claimant was scheduled to close the next day and did not want to change that. She continued to try to find someone to work the morning shift. When she could not she find an employee to open on September 12, she left Courtney a message telling her that she could not find anyone to work the morning shift. The claimant's message indicated that Courtney would have to open on September 12. Courtney did not respond to the message the claimant left, because she did not listen to it until the morning of September 12.

When Courtney did not respond to the claimant's messages, she talked to Hayes, an assistant store manager. The claimant understood that he would look at the schedule and make the necessary arrangements for someone to work the next morning. Hayes, however, understood the claimant would contact him before she left if she had not found someone to open the next morning before she went home. When the claimant did not talk to Hayes again, he assumed she had the coverage problem for the next morning resolved.

When no one came to open Caribou the morning of September 12, Courtney went to work and opened Caribou up late at 6:30 a.m. The employer discharged the claimant on September 15 for failing to follow the proper procedures in making sure the Caribou was staffed the morning of September 12.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. When the claimant left work on September 11, she did not know if anyone agreed to work at the Caribou the morning of September 12 and she did not make sure Hayes or any other assistant manager had made or would make the necessary arrangements to cover that morning shift. Instead, the claimant assumed Hayes would make sure the morning shift was covered. Obviously, the claimant and Hayes had a communication breakdown. Even though the claimant was negligent when she failed to make sure the morning shift was covered when she left work, this isolated incident does not establish that she intentionally disregarded the employer's interest or has exhibited a pattern of negligence to the extent that she committed work-connected misconduct. The claimant did not do what she should have done, but she reasonably assumed Hayes or Courtney would make sure the shift was covered since the claimant had informed both of them there was a problem. Neither Hayes nor Courtney followed up, either, to make sure the shift was covered, because they, like the claimant, assumed someone else (the claimant) had done this. For unemployment insurance purposes, the claimant is qualified to receive benefits because she did not commit work-connected misconduct.

DECISION:

The representative's October 11, 2010 determination (reference 01) is affirmed. The employer established justifiable business reasons for discharging the claimant. Even though the claimant was negligent, she did not commit work-connected misconduct. As of September 12, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw