

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENT J LONEMAN
Claimant

APPEAL NO. 13A-UI-12483-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/13/13
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated October 31, 2013, reference 01. The decision allowed benefits to the claimant, Trent Loneman. After due notice was issued a hearing was held by telephone conference call on December 2, 2013. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Store Director Joel Flug, Manager of Store Operations Gary Jensen, and was represented by Corporate Cost Control in the person of Bruce Burgess. Molly Rooney observed but did not participate. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Trent Loneman was employed by Hy-Vee from August 31, 2010 until September 30, 2013 as a full-time assistant produce manager. He received a copy of the employee handbook which sets out the policies governing employee conduct. There is specifically a "social media" policy which governs comments regarding Hy-Vee and Hy-Vee employees by other employees. It specifically includes use of social media even on personal time with personal computers. The policy also states employees should be "particularly mindful" to follow Hy-Vee's "anti-harassment, discrimination, and retaliation policies" when using social media, and are prohibited from "bullying, harassing, defaming or gossiping" about co-workers.

On September 28, 2013, Manager of Store Operations Gary Jensen saw on Mr. Loneman's Facebook page a comments which said, "murder is justifiable when it's your boss... just saying." He was confronted about it on September 28, 2013, and admitted he had made the comment.

He was suspended pending consultation with the corporate human resources and legal departments.

Mr. Loneman had received a final written warning in May 2013, for using vulgar language to, and inappropriately touching an employee of the bank which is located within the Hy-Vee store. The written warning notified him his job was in jeopardy if there were any further incidents of policy violation.

Mr. Jensen notified the claimant by phone on September 30, 2013, he was discharged. He has received unemployment benefits since filing a claim with an effective date of October 13, 2013. The employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 had been advised his job was in jeopardy as a result of his violation of the harassment and bullying policies. Instead of modifying his conduct he made a very specific mention of "murder" in reference to his "boss" on a social media site. The employer's policy is very specific and detailed about such comments by employees even if such comments are made off duty and on personal computers. These comments are published on social media sites accessible to large numbers of people.

The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. The claimant had been warned about the consequences of conduct against company policy. The implied threat against a supervisor is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of October 31, 2013, reference 01, is reversed. Trent Loneman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$2,046.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs