

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

VICKI A VANDER HORN
1611 28TH AVE
MOLINE IL 61265

HY-VEE INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 05A-UI-12282-AT
OC: 11-13-05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Vicky A. Vander Horn filed a timely appeal from an unemployment insurance decision dated December 5, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held December 21, 2005 with Ms. Vander Horn participating. Assistant Store Director Matt Egger and Kitchen Manager Scott Boche testified for the employer, Hy-Vee, Inc., which was represented by David Williams of TALX UC eXpress.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Vicky A. Vander Horn was employed as a kitchen

clerk by Hy-Vee, Inc. from January 5, 1998 until she was discharged November 5, 2005. On the day of discharge, Ms. Vander Horn received a complaint from a customer who had not received buns along with her catering order. Kitchen Manager Scott Boche had determined that buns would not be sent with the order. Ms. Vander Horn initially attempted to defend her supervisor's order, but relented when the customer became insistent. Later, Mr. Boche and Assistant Store Director Matt Egger spoke with Ms. Vander Horn about the incident. During the conversation, Ms. Vander Horn defended her actions and on occasion began speaking while Mr. Egger was also speaking. Ms. Vander Horn was not being argumentative.

Ms. Vander Horn had received an earlier warning about arguing with her supervisor.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The fighting issue in this case is how far an employee may go in defending a supervisor's decision when the decision is challenged by an unhappy customer and how far an employee may go in justifying her behavior when that supervisor then challenges her customer service. Mr. Boche acknowledged in testimony that he had determined that the buns would not be sent with the order. Circumstance left Ms. Vander Horn in the position of having to defend Mr. Boche's decision. Since the customer was not called to testify, the administrative law judge has no direct evidence that Ms. Vander Horn overstepped the boundaries of common sense in defending Mr. Boche's determination.

The administrative law judge notes that during testimony Ms. Vander Horn displayed a tendency to start answering his questions before he had completed them. The responses were not angry, confrontational or disrespectful. In over 21 years, this judge has been interrupted often, sometimes by hostile, defiant witnesses, and other times by well-intentioned witnesses who through nervousness or an understandable desire to present their cases have been over eager. The claimant falls within the latter category. Mr. Boche, an observer in the final meeting with the claimant, described her demeanor during that meeting as the same as her demeanor in the hearing. Finding no disrespect or deliberately inappropriate behavior by the claimant in the hearing, the administrative law judge concludes that it was no more than an isolated lapse of judgment that she interrupted Mr. Egger in the meeting that led to her discharge.

From the evidence in this record, the administrative law judge concludes that no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 5, 2005, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kkf/kjw