

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERNESTO RUIZ**

Claimant

**APPEAL NO. 09A-UI-19021-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 11/08/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ernesto Ruiz (claimant) appealed a representative's December 11, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Hy-Vee (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for February 8, 2010, in Des Moines, Iowa. The claimant participated personally through Celia Huante, Interpreter. The employer was represented by Tim Spier, Hearings Representative and participated by Ric Anderson, Store Director; Troy Cse, Manager of Perishables, Abraham Herrera, Assistant Manager; Dennis McCready, Assistant Manager; and Steven Hall, Assistant Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on March 4, 2008, as a full-time shift manager. The claimant signed for receipt of the employer's handbook on March 4, 2008. The employer issued the claimant verbal warnings for failure to follow instructions on January 19, 2008, October 24, 2008, March 13, 2009, April 11, 2009, July 17, 2009, July 25, 2009, November 4, 2009. At least four of these warnings were for not appearing at the front of the store when his name was called over a loud speaker and instructed to come to the front of the store. The claimant was instructed to respond to the page no matter who made the request. On January 6, 2009, the claimant was issued a written warning after being told three times it was unacceptable to use a cellular telephone on the sales floor. The employer issued the claimant written warnings on March 28 and May 29, 2009, for giving customers discounts without approval of the employer. The latter warning demoted the claimant to a clerk. The employer notified the claimant that further infractions could result in termination from employment.

On November 6, 2009, the clerks needed help at the registers because of the number of customers in line. They called for the claimant approximately three times. The claimant did not respond. He knew that he was being called to help with customers but felt he did not have to respond until a front end manager called his name. The front end manager called for the claimant and he went to the front of the store. The employer terminated the claimant for failure to follow instructions.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's December 11, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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