

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TAMMY J BAYSINGER
Claimant

HY-VEE INC
Employer

APPEAL NO. 23A-UI-01826-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/25/22
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On February 21, 2023, the employer filed a timely appeal from the February 13, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 30, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on March 9, 2023. Tammy Baysinger (claimant) participated. Frankie Patterson of Corporate Cost Control/Experian represented the employer and presented testimony through Janet Rossow and Joseph Prouty. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects not benefits have been paid to the claimant in connection with the claim.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Tammy Baysinger (claimant) was employed by Hy-Vee, Inc. as the full-time Floral Manager at the Spirit Lake Hy-Vee store from March 2022 until December 30, 2022, when Joseph Prouty, Store Manager, discharged her from the employment. The employer's decision to end the employment was prompted by complaints from the claimant subordinates. The three subordinates in question each still works for Hy-Vee.

The employer received the most recent complaint on December 29, 2022 by email. Without providing specific examples, the subordinate complained the claimant micromanaged staff, did not allow staff to run the department in the claimant's absence, and did not trust the floral designers. The claimant has never seen the email in question. The employer did not discuss the complaint with the claimant.

Instead, the employer prepared a termination document and summoned the claimant to a meeting on December 30, 2022 for the purpose of discharging the claimant from the employment. What happened at the termination meeting is a matter of dispute. The employer asserts the claimant cut short the meeting and announced she was quitting in lieu of being discharged. The claimant asserts the employer told the claimant the employer was accepting the claimant's resignation, effective immediately, though the claimant had not submitted a resignation. Prior to the meeting, the employer had determined the employment would be ending that day. When the meeting was done, a manager observed the claimant as she collected her personal effects and exited the workplace.

The employer's decision to discharge the claimant followed a separate December 27, 2022 complaint from another floral designer, who alleged the claimant constantly belittled her and complained to her for four hours, leaving the subordinate with an upset stomach. The claimant was aware the subordinate was not feeling well when she arrived at work that day. The claimant and the subordinate had discussed the claimant leaving early that day, due to the subordinate not feeling well and business being slow. The claimant approved the subordinate's early departure, not knowing that Mr. Prouty had also approved the subordinate's earlier departure. The employer did not discuss the subordinate's complaint with the claimant. On or about this same date, Mr. Prouty spoke to the claimant about his idea of holding an off-site staff meeting with the floral department staff to quell discord. The employer subsequently decided forego the meeting and to end the claimant's employment instead.

Earlier in the claimant's employment a different subordinate requested to move to a different department after complaining to the employer that the claimant micromanaged her, belittled her, and would not allow the subordinate to make a decision when the claimant was at work. The employer did not discuss the complaint with the claimant and deflected the claimant's questions regarding why the subordinate was moved mid-shift to a different department.

On October 4, 2022, the employer met with the claimant and counseled her to treat all staff with kindness and respect. The employer warned that another subordinate complaint could lead to discipline or discharge from the employment. However, the employer declined to discuss particulars of complaints. The claimant asked what else she could do to improve. The employer offered no specific guidance. The employer advises that Hy-Vee has no training protocol to assist supervisors in honing their interpersonal communication skills. The employer points instead to a policy prohibiting harassment. The claimant was aware of the harassment policy, but rejects the notion that she harassed anyone.

Throughout the employment, the claimant focused on adhering to Hy-Vee policies and production expectations. The claimant believes these factors made her unpopular with her subordinates. During the employment, the employer acknowledged the claimant's business skills and the value they contributed to the employer's enterprise.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer

desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

Iowa Administrative Code Rule 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

...

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a December 30, 2022 discharge for no disqualifying reason. The weight of the evidence establishes a discharge, rather than a quit in lieu of discharge. The employer summoned the claimant to the December 30, 2022 meeting with the intention of discharging the claimant from the employment. The employer made its intention clear during the meeting. The claimant did not voluntarily separate from the employment. The employer disingenuously stated during the meeting that the employer was accepting the claimant's resignation, despite there being no resignation. The claimant appears to have been insufficiently delicate in dealing with floral department staff. The claimant was still a relatively new Hy-Vee manager at the time of the discharge. The claimant was charged with adhering to Hy-Vee policies and practices and meeting production expectations. The claimant performed her work duties in good faith and to the best of her ability. The claimant demonstrated during the hearing a rather assertive aspect, which if demonstrated in the workplace, may well have led others in the workplace to perceive her as overbearing. Despite being aware in early October 2022 that the claimant was lacking in "soft skills," the employer provided no guidance or training that might help the claimant improve in this area. The claimant was willing to improve in this area and solicited information to better understand the issues she needed to address. The employer declined to engage in meaningful, productive discussion with the claimant about how she could improve. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove the claimant *bullied* or *harassed* anyone. The employer based the discharge decision on complaints and allegations, rather than on proof of misconduct. The employer elected not to present testimony from any of the complainants and was by and large unable to speak to particulars of the claimant's alleged conduct. The evidence fails to establish a knowing or intentional violation of Hy-Vee policy or that the claimant unreasonably disregarded any reasonable employer directive. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 13, 2023 (reference 01) decision is AFFIRMED. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 13, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.