

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A DIX
Claimant

APPEAL NO. 08A-UI-03284-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/24/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Mark Dix, filed an appeal from a decision dated March 31, 2008, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 17, 2008. The claimant participated on his own behalf and was represented by Cory Walker. The employer, Hy-Vee, participated by Manager of Delivery Services Tim Wood and was represented by Art Neuhedel. 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.

FINDINGS OF FACT:

Mark Dix was employed by Hy-Vee from March 5 until June 8, 2007, as a part-time delivery driver. He delivered pharmaceuticals to nursing homes. At the time of hire he received a copy of the employee handbook which prohibits harassment and provides for discharge of any employee who violates the policy.

On April 30, 2007, Manager of Delivery Services Tim Wood, received a call from the manager of store operations in Coralville, Iowa, complaining the claimant had been “stalking” a female employee of the store. He would visit her while she was on duty, had asked her to have a cup of coffee with him and had called the store to ask for her phone number and e-mail address. Mr. Wood admonished the claimant about this inappropriate conduct and reminded him of the harassment policy in the employee handbook.

On June 8, 2007, Cathy Scott, the director of nursing at a facility in Burlington, Iowa, contacted Delivery Services Operations Manager Matt Pertzborn. At a staff meeting that morning one young nurse stated she was bothered by the conduct of the Hy-Vee delivery person. She stated he had sent her flowers, made comments that he wished he were a patient at the facility so she could “take care of him,” and asked for her home phone number and e-mail address. After she

made this statement five other nurses, all between the ages of 18 and 23, spoke up and had similar complaints.

Ms. Scott stated she did not want Mr. Dix delivering medication to the facility in the future. Mr. Pertzborn notified the claimant immediately he was to deliver the medications to the local Hy-Vee pharmacy and it would delivery them to the nursing home. The claimant was told the reason for this decision and when contacted later by Mr. Wood, he acknowledged he knew of the complaints and understood his job was probably in jeopardy. He was discharged at that time.

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 attempted to explain the source of the complaints as merely misunderstandings by the women he approached in a "friendly" manner to make "polite conversation." The administrative law judge does not find this to be convincing. One woman, or even two, might have misunderstood his intentions but six nurses and one employee of the Hy-Vee store in another city, obviously all felt the same way about his conduct. There was undoubtedly something in his manner, the tenor of his comments and his overall interaction with them which made these women excessively uncomfortable.

The claimant had been counseled about these interactions and did not modify his conduct to maintain a more professional demeanor and distance with the customers. This jeopardized the employer's business with its customers and created a hostile work environment for one of its own employees. This is a violation of the company policy and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 31, 2008, reference 02, is affirmed. Mark Dix is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css