

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RONNY SNOW
Claimant

HY-VEE INC
Employer

APPEAL NO. 14A-UI-07314-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/25/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Ronny Snow (claimant) appealed an unemployment insurance decision dated July 8, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2014. The claimant participated in the hearing. The employer participated through Assistant Vice-President of Transportation Jim Moore, Truck Shop Manager Chad Masters, Assistant Truck Shop Manager Kevin Andersen, Assistant Human Resources Director Jamie Aulwes, and Employer Representative Bruce Burgess. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

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 employed full-time tire repair truck shop serviceman from August 31, 2007, through April 29, 2014, when he was discharged for insubordination and repeated threatening behavior. He received his first written warning for insubordination on January 18, 2011, after he spoke to his supervisor in a threatening way when confronted on the use of brake clean. On July 20, 2011, the claimant stood on a driver's running board and began yelling obscenities at him. He was suspended for a week beginning July 24, 2011, for harassing and threatening his co-worker.

A safety and security officer saw the claimant sleeping in the break room on January 19, 2014, and the officer reported it to the employer on the next day. On January 21, 2014, the claimant confronted the officer for reporting him since he claimed he was not sleeping. Witnesses said the claimant used foul language and was very loud when he confronted the officer. The employer issued the claimant a written warning on January 28, 2014, for harassing a co-employee.

The claimant was suspended on April 30, 2014, after he drove at excessive speeds off the Hy-Vee Fuel Center lot in a company vehicle on April 29, 2014. He admitted to the employer that he used profanity and dared Supervisor Kevin Anderson to punish him when his supervisor questioned him about the safety incident. The employer discharged him on May 8, 2014, for a consistent pattern of insubordination and the safety violation, which was a blatant disregard for a safe work environment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for discharged for insubordination and repeated threatening behavior. 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). An employer has the right to expect decency and civility from its employees. The claimant's repeated insubordination and aggressive behavior after three disciplinary warnings show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 8, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css