

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JODI A RAHN
Claimant

APPEAL NO: 18A-UI-07173-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/03/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 29, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2018. The claimant participated in the hearing with Attorney Frank Tenuta. Jessica Harms, Assistant Director of Perishables; Al Metz, Manager of Hickory House Restaurant; Shawn Brown, Store Director; and Barbara Buss, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time kitchen clerk for Hy-Vee from April 26, 2011 to June 5, 2018. She was discharged June 5, 2018, for using profanity, job performance and refusing to follow the employer's instructions.

On October 2, 2017, she received a verbal warning in writing after Assistant Director of Perishables, Jessica Harms, overheard her say, "I fucking hate my job," by the deli counter which caused some customers to turn around and look at her. On November 6, 2017, she received a written warning for negativity and attitude after a customer and co-workers complained about the claimant's use of profanity in the department and feeling uncomfortable with her language and attitude. On December 17, 2017, the employer talked to the claimant about her attitude toward others and told her that her job was in jeopardy. The employer discussed several previous conversations held with the claimant and told her she had to show improvement. It told her it could not have her swearing in the department and if she did not show improvement there would be "no room for her" with the employer. The claimant stated she was "doing the best I can" with regard to her attitude. The employer stated the claimant responded aggressively and did not try to take advice given by the employer when it would meet with her. The employer described her behavior during meetings as defensive and loud. She would maintain the situation was not her fault and the employer would have to terminate her because she was not quitting.

On June 5, 2018, the employer asked the claimant to come to the office to discuss performance issues it counseled her about previously. The claimant failed to put green onions in the green onion potato salad and the employer stated she often did not follow recipes or weigh ingredients. The employer also told the claimant it had concerns with her attitude and the claimant became hostile immediately. She said she did “not want to hear it. I don’t need this. I’m not quitting. You’re going to have to fire me.” The claimant slid her chair back and stood up and the employer asked her to listen and take a break. The employer suggested she go home for the rest of her shift and come back to discuss the matter after she “cooled down.” The claimant turned around and said, “If you want to get rid of me you’re going to have to get rid of me. I’m not leaving.” She was “very aggressive...defensive and loud.” She then walked toward the office door and the employer told her she needed to “go home for good” and terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected

misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The employer previously warned the claimant several times about her use of profanity, attitude, and failure to follow recipes and weigh ingredients. Her attitude and behavior during those warning meetings was usually contentious and inappropriate. On June 5, 2018, the employer met with the claimant about her work performance, with the latest incidents being her failure to add green onions to the green onion potato salad and creating a hostile work environment. The employer explained the reason for the meeting and the claimant became loud, aggressive and defensive about those issues before beginning to walk out of the meeting. After the claimant's response, the employer suggested the claimant go home for the remaining three hours of her shift and "cool down" but the claimant said she would not leave and stated the employer would have to "fire her." The employer had no intention of terminating the claimant's employment until her behavior in the meeting prompted it to decide her attitude and behavior was inappropriate and was not improving.

While the claimant disagreed with what the employer was saying, she still had a responsibility to respond in a respectful manner rather than becoming belligerent and practically daring the employer to terminate her employment. After observing the claimant's behavior on the floor and then in the meeting June 5, 2018, the employer made the decision to terminate the claimant's employment.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 29, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs