IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOHN G CLINEFELTER
Claimant

HY-VEE INC
Employer

APPEAL NO: 12A-UI-06243-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/29/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 21, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his attorney, John Haroldson. Bruce Burgess, a Corporate Cost Control, Inc. representative, appeared on the employer's behalf. Ben Conway, the store director; Teddy Phipps, the claimant's former supervisor; Jake Talbot; Bill Farley; Steve Loder; and Ryan Brandenmeyer were present to testify on the employer's behalf. During the hearing, Employer Exhibits One and Two and Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 1993. The claimant worked as a full-time night stock clerk. The last six months of his employment, Phipps supervised the claimant at the store Conway managed. Prior to April 18, 2012, the claimant made it known that he thought Phipps had it in for him. Conway noticed that the claimant had problems getting along with more than one supervisor. (Claimant Exhibits A and B.)

On November 9, 2011, the claimant received a written warning for insubordination. (Employer Exhibit One.) The claimant received the warning after he told Phipps he would not work as first checker, even though that was the job he had been scheduled to do. The claimant then refused to go home as Phipps directed him to do. After the employer talked to the claimant, he went and worked as a checker. The November 9 warning stated that this was the claimant's final warning for insubordination and if this happened again, he would be discharged.

The claimant requested some time off from work in April. When the claimant made his vacation request, he did not want April 16 off as a vacation day. Phipps did not schedule him to work this day. The claimant reported to work on April 16, thinking he was scheduled to work, but was not. (April 16 would be a day he would normally work.) When the claimant appeared upset because he was not scheduled to work, Phipps asked him go to the office so they could talk.

While in the office, R.B. noticed that the claimant and Phipps appeared to be engaged in a heated conversation. R.B. did not pay attention to what the two of them were talking about. During the conversation, the claimant made a comment that he had given Phipps his vacation request two weeks ago and that Phipps was stupid and an idiot. Phipps responding by letting the claimant know that he could not talk to him like that, since Phipps was his supervisor. The claimant then apologized for his comment. R. B. noticed the two appeared to calm down at the end of their conversation. R.B. did not overhear the claimant's comments. The claimant went home.

Phipps reported the April 16 incident and Conway talked to the claimant on April 18. The claimant denied he made the comment and asked Conway to talk to R.B., who was in the office the same time that he and Phipps were. Conway talked to R.B. about what he heard.

On April 29, the Conway met with the claimant with Phipps present. Conway told the claimant he was not being discharged because even though R.B. had not heard the claimant call Phipps stupid or an idiot, Conway trusted Phipps and did not believe the claimant. After having a frank and blunt discussion about his feelings about the claimant's attitude, Conway read the corrective action that he expected the claimant to follow. After Conway completed the corrective action the claimant was directed to follow, the claimant told Conway he disagreed. With Phipps present the claimant told Conway, "Either I said those things and I should be fired or Teddy is lying and he should be fired. If I said those things, I consider that to be misconduct. For him to make things up, to lie and get me fired is gross misconduct. So I think something needs to be done. I think somebody should be in trouble." (Claimant Exhibits One and Two.) Conway considered this statement as a challenge to the decision he had made regarding the April 16 incident. Conway considered the claimant's statement as insubordination because he did not agree with Conway's decision. After the claimant made this statement, Conway discharged him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
>
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
>
> 3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer made the decision that the claimant would not be discharged for the comments Phipps reported the claimant made to him on April 16. During the April 29 meeting, Conway told the claimant that even though another employee had not heard the claimant make the reported comments, he trusted Phipps and did not believe the claimant. During the meeting, Conway warned the claimant that if he again challenged a member of management, he would be immediately discharged. After Conway read the corrective action, the claimant challenged Conway's decision by commenting that either he or Phipps should be discharged and said that Phipps lied. The evidence does not establish that the claimant made the comment because he was defending himself. The basis for this conclusion is stated below.

I find Phipps' testimony that the claimant made the comment he reported credible. This conclusion is based on the fact the claimant's previous refusal to follow Phipps' instructions and because he believed Phipps made a scheduling mistake when he submitted his vacation. Also, Phipps knew R.B. was in the office and it he would damage his management career if he made a false report. Since the claimant had apologized for his comment, Phipps had no reason to think the claimant would later deny making the comment.

From an outside source, Conway heard how unhappy the claimant was at work. In this case, the employer gave the claimant a final opportunity to keep his job. The claimant's response essentially dared Conway to end his employment. Even though Conway had just told the claimant the consequence if he was argumentative with management and that he needed to think before he speaks, the claimant challenged Conway's decision not to discharge him. (Claimant Exhibits A and B.) The claimant's comment and conduct after Conway explained his corrective action amounts to an intentional and substantial disregard of the standard or behavior the employer has right to expect from an employee. The claimant committed work-connected misconduct on April 29. As of April 29, the claimant is not qualified to receive benefits.

DECISION:

The representative's May 21, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 29, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw