

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC MEIER
Claimant

APPEAL NO: 16A-UI-11191-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/25/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 11, 2016, 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 November 1, 2016. The claimant participated in the hearing. Jason Sheridan, Store Director and Keith Mokler, 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 bakery clerk for Hy-Vee from May 14, 2015 to September 23, 2016. He was discharged for accumulating two no-call no-show absences.

On September 21, 2016, the claimant was scheduled to work from 9:00 a.m. to 5:00 p.m. but he failed to call the employer or show up for work that day. On September 22, 2016, he contacted the bakery manager who informed him he needed to speak to Store Director Jason Sheridan before he could return to work. On September 23, 2016, the claimant called Mr. Sheridan and stated he was arrested in the early morning hours of September 21, 2016. Mr. Sheridan notified the claimant his employment was terminated.

In July 2016 (date not provided) the claimant was a no-call no-show because he was in jail. The employer talked to him about the incident and stated if it happened again it would put his job in jeopardy. The employer did not issue the claimant any written warnings about his attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant accumulated two no-call no-show absences due to being in jail sometime in July 2016 and again September 21, 2016, the employer did not issue the claimant a documented warning following his July 2016, no-call no-show absence.

The general rule in unemployment law states that if an employee accumulates three no-call no-show absences his actions are considered work-related misconduct. If the employee has three consecutive days of no-call no-show absences, he will be deemed to have voluntarily quit his job. Neither of those scenarios apply to the facts in this case.

The claimant had two no-call no-show absences rather than three and he did not voluntarily quit his job by accumulating three consecutive no-call no-show absences. While not condoning the claimant's failure to call the employer to report his absences in July and September 2016, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 11, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs