

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE R TERRY**  
Claimant

**APPEAL NO. 14A-UI-08918-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/03/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 22, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on September 15, 2014. The claimant did participate and was represented by Harley Erbe, Attorney at Law. The employer did participate through Scott James, Store Director and was represented by James Tranfaglia, of Corporate Cost Control.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a product specialist beginning on September 7, 1989 through August 7, 2014 when she discharged.

On August 4 the claimant and her supervisor had a verbal altercation. One of the claimant's coworkers who overheard the conversation went to store director Mr. James to complain that the claimant was disrespectful and her conduct toward Angela Wieck was unacceptable. Mr. James spoke to the claimant and to Ms. Wieck about what had happened. Ms. Wieck reported that the claimant was complaining, making negative comments about the work situation on August 4 and generally being uncooperative and displaying negative attitude. The claimant's comments were irritating her coworkers, who complained about her. The claimant's behavior and constant complaining comments were a burden to her coworkers as it made the workplace more difficult for all of them and brought down morale. The claimant had received a written warning for the same behavior on April 23, 2014 that placed her on notice that her continued negative attitude, comments and refusal to change her behavior could lead to her discharge.

On August 5, Mr. James met with the claimant along with Joe Miller. The claimant refused to listen to Mr. James as he tried to counsel her on how to work with her supervisor and to overcome her negative attitude and comments. The claimant accused Mr. James of running the

store like a 'communist' and complained about Ms. Wieck. The claimant reported that Ms. Wieck was incompetent and that she could perform the job better and should have been given Ms. Wieck's job. When the claimant worked in the Creston store prior to July 2013 when she transferred to the West Des Moines store, she had been the product manager and held the same position Ms. Wieck held. The claimant became so hysterical she refused to listen to Mr. James and it became impossible to continue the conversation. Mr. James sent the claimant home and told her they would continue the discussion the next day when she was calmer.

On August 6, Mr. James met again with the claimant and with Ms. Bell. The claimant again became upset that Mr. James was even having a discussion with her about her actions and comments in the workplace. She again kept interrupting him and refused to listen to him as he tried to counsel her on what actions she needed to take and what she needed to refrain from doing in order to be successful in the workplace. At the end of the conversation the claimant admits she said out loud, 'this is b.s.' Mr. James recalls the claimant saying "this is bullshit." Mr. James then ended the conversation again and had the claimant go home. Mr. James wanted overnight to consider the claimant's demeanor and comments during the two conversations he had with her. He determined that based on the conversations he had with the claimant, her refusal to listen during each conversation, her prior warning for the same behavior and her final comment that "this was b.s." that the claimant was not willing to change or to even attempt to curb her negative behavior and attitude thus, she was discharged on August 7.

The claimant was not singled out by Ms. Wieck as it was not even Ms. Wieck who reported the conversation to Mr. James it was one of the claimant's coworkers. The claimant was obligated to at least listen to the store director without interrupting him. While the claimant may not have agreed with all of the decisions made by her supervisor, she was obligated to follow their instructions. The claimant evidenced her intent by referring to the situation as "b.s" after her conversations with Mr. James. The claimant had been given a warning for the exact same behavior on April 23, 2014.

#### **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 § 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had a prior warning about her negative comments and behavior. That warning clearly put her on notice that continued comments and behavior could lead to her discharge. It was not Ms. Wieck who complained about the claimant's behavior on August 4. It was her coworkers who had to listen to her. Mr. James gave the claimant ample opportunity to listen and to demonstrate a willingness to change. The claimant's characterization of the situation as "b.s." gave clear indication of her attitude and what her actions would be going forward. The claimant may have believed she could do a better job than Ms. Wieck, but that job was not hers. Under these circumstances, the administrative law judge concludes that the claimant's actions in light of her warning for similar behavior are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The August 22, 2014 (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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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