

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COREY D HANLEY**  
Claimant

**APPEAL NO. 15A-UI-08742-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/05/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Corey Hanley filed an untimely appeal from a representative's decision dated July 20, 2015, reference 01, which denied benefits finding the claimant was discharged from work on June 30, 2015 for violation of a known company rule. The claimant's appeal was to be postmarked or received by the Appeals Section by July 30, 2015. The appeal was not received by Workforce Development until August 5, 2015 beyond the 10-day statutory time limit. After due notice, a telephone hearing was scheduled for and held on August 26, 2015. The claimant participated personally. Appearing on behalf of the claimant was his personal representative, Ms. Susan Smith. The employer participated by Mr. James Tranfaglia, Hearing Representative, and witnesses: Brian Wilken, Store Director; Brent Fjeldheim, Meat Department Manager; Ms. Stacy Hoard, Perishable Manager, and Mr. Steven Jeffery, witness to the employer's participation at fact finding. Employer's Exhibits A, B, C, D, E, and F were admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant's appeal filed herein should be considered timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge concludes that Mr. Hanley's appeal should be considered timely. Claimant did not receive the adjudicator's determination until after the appeal period had elapsed and immediately filed an appeal upon being informed that there was an adjudicator's determination that was adverse to him.

Corey Hanley began employment with Hy-Vee, Inc. on December 13, 2014 and was discharged from employment on June 30, 2015. Mr. Hanley worked as a part-time meat department employee and was paid by the hour. His immediate supervisor was Brent Fjeldheim.

Mr. Hanley was discharged on June 30, 2015 based upon an incident that had taken place approximately one and one-half weeks earlier.

On June 30, 2015, the store director was informed of a previous incident where Mr. Hanley was observed by another employee "grabbing the butt" of a female employee who was working in the meat department with him. Because of the seriousness of the allegation, Mr. Wilken began an investigation and interviewed Ms. Endelman, the female worker associated with the incident, the claimant and another employee identified as B. J. Wieman. Ms. Endelman stated that the claimant had previously asked her on a number of occasions for her cellphone number and that she had repeatedly stated that she was not interested in a personal relationship with Mr. Hanley. Ms. Endelman further stated that on the night in question, Mr. Hanley situated himself close to her while she was working and placed his hand on her "rear end." The female worker reported that she was surprised and exclaimed, "What the Fuck?" Ms. Endelman further stated another employee, B. J. Wieman had seen the incident and heard her exclamation. Ms. Endelman further stated that she did not initially report the incident but later complained because other employees appeared to be knowledgeable about the incident. Mr. Wilken interviewed B. J. Wieman who confirmed that he had observed the incident, had viewed Mr. Hanley touching Ms. Endelman's butt and had heard her loudly exclaim her surprise. When Mr. Wilken interviewed Mr. Hanley, he admitted touching Ms. Endelman in the way that she had described and stated that he had done so because Ms. Endelman had grabbed his private parts the preceding night while they worked together. Mr. Hanley further stated that in response to his touching Ms. Endelman's rear end, both he and Ms. Endelman only laughed about the incident. Mr. Wilken re-interviewed Ms. Endelman who categorically denied touching Mr. Hanley and Ms. Endelman re-affirmed that the sequence of events had been as she had previously stated them. Because both Mr. Wieman and Ms. Endelman's statements about the incident corroborated each other's statements, more weight was given to their statements than was given to Mr. Hanley's statements about the event and factors leading up to the event.

Because Hy-Vee, Inc. considers violation of its sexual harassment policies to be very serious in nature, Mr. Hanley was discharged from his employment.

Mr. Hanley denies intentionally touching the female worker's buttocks stating that the incident occurred when he accidentally brushed against her backside while working. Mr. Hanley also testified that the female worker had previously touched him in a personal way and in effect claimant believed that his touching of Ms. Endelman was consensual. Claimant testified that any reaction to his touching was both he and Ms. Endelman only "laughed."

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the testimony of the witnesses is disputed. The employer asserts through business records and hearsay evidence that Mr. Hanley's conduct during the incident in question rose to the level of intentional, disqualifying misconduct. In contrast, Mr. Hanley in his firsthand, sworn testimony denies intentionally pushing the female worker's backside and maintains that he did not violate the company's sexual harassment policies. The administrative law judge notes that the employer chose not to bring either of two firsthand witnesses to the event, but instead has chosen to rely upon secondary witnesses and business records in support of its position.

After carefully reviewing the hearing record in this matter, the administrative law judge concludes that employer has been able only by a preponderance of the evidence to meet its burden of proof that the claimant's discharge took place under disqualifying conditions.

The evidence in the record establishes that the statements made by Ms. Endelman, the female worker, are corroborated by the statements of B. J. Wieman, the other meat department employee who was present during the incident. Both statements are consistent and establish that Mr. Hanley's conduct in touching the female worker's buttocks was a surprise and unwanted. The administrative law judge also notes inconsistencies in Mr. Hanley's testimony about what took place on the day in question and his intentions.

Because the employer has sustained its burden of proof in establishing that the claimant violated the company's sexual harassment policy by inappropriate touching and unwanted sexual advances, the administrative law judge concludes that the claimant was discharged for misconduct and is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated July 20, 2015, reference 01, is affirmed. Claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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