

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**WILLIAM M COOPER**  
Claimant

**APPEAL NO. 18A-UI-08867-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/05/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

William Cooper (claimant) appealed a representative's August 20, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 10, 2018. The claimant participated personally. The employer was represented by Jennifer Rice, Hearings Representative, and participated by Tavis Pekny, Assistant Director; Linda Pochobradsky, Human Resources Manager; and Angel Eddings, Customer Service Employee. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 21, 2015, as a part-time clerk. He signed for receipt of the employer's handbook on January 21, 2015. The handbook states that physical or verbal abuse is not acceptable conduct.

On April 14, 2016, the employer issued the claimant a written warning for repeatedly asking a female for her telephone number when she refused. The claimant thought it was a joke. On June 10, 2017, the employer talked to the claimant about using inappropriate language and behavior in the company of minor employees. The claimant said he was an amateur comedian and trying out his act. On February 4, 2018, the employer talked to the claimant about seeing him on video kissing and fondling a minor. The claimant thought it was allowed because the female told him she was not a minor and he was dating her. The employer warned the claimant each time that he could be terminated for further infractions.

In May 2018, a customer service employee (employee) talked to the employer about the claimant. He was making comments to her about her step-daughter, a minor. He talked about

the step-daughter's body and bust. The employee asked that he stop making comments. The employer reduced the employee's hours so she did not work with the claimant.

In July 2018, the employee told the employer that the claimant threatened to slash her tires. The claimant threatened to slash most co-worker's tires if they refused to work a shift for him. He thought this was a joke.

On July 22, 2018, the claimant went to the store when he was not assigned to work to mail a package. While he was waiting in line, he was on his phone speaking badly of the employee, who was behind the counter. Another worker waited on him. Rather than paying immediately, he made customers wait while he continued to make comments about the employee. The employee left the area to go on break. As she walked past him she said quietly so only the claimant could hear, "If you keep telling people what happened and only your side of the story, we need to have a meeting with Katie because it's fucking bullshit". The employee walked away and the claimant said loudly, "If you say that to me again, we can take this outside". The employee was concerned and afraid. The claimant meant the words as an incitement to a verbal or physical altercation in the store's parking lot. He knew that his words might affect the employer's business.

On July 23, 2018, the employer began to collect statements. One customer called to complain and the employer took the information. It completed its investigation on or about August 4, 2018. On August 4, 2018, the employer terminated the claimant for threatening a co-worker on July 22, 2018.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Off duty conduct must be "work related" if it is to be grounds for discharge and disqualification for misconduct. That is, it must have a direct, negative effect on the employer. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). In order for an employer to show that its employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

[T]hat the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

*Dray v. Director*, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77-78.

First, the conduct must have a connection with work. The claimant's conduct took place in the store and at the counter where he worked. In front of customers, he spoke disparagingly of the employee behind the counter. Later, he threatened to fight her outside the building. The claimant's intent was to fight in the parking lot. The claimant's conduct was fully connected with the employer's store.

Second, the conduct caused harm to the employer's interests. Customers heard the claimant's threats and one customer called to complain. The employee was afraid of the claimant. Based on the claimant's behavior, the employer was exposed to possible liability.

Thirdly, the conduct violated the employer's handbook and the claimant knew the employer's interests would suffer when he engaged in the conduct. The claimant violated the employer's policy against verbal abuse. He threatened physical abuse. The claimant knew customers would not want to shop at a grocery store where there was an employee threatening physical violence.

The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's August 20, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs