

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BREACK A BRADFORD
19182 – 410TH ST
DERBY IA 50068

HY-VEE INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

HY-VEE INC
C/O TALX UC EXPRESS
4100 HUBBELL AVE #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-08180-HT
OC: 07/04/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated July 20, 2004, reference 01. The decision allowed benefits to the claimant, Breack Bradford. After due notice was issued a hearing was held by telephone conference call on August 19, 2004. The claimant participated on his own behalf. The employer participated by Manager of Perishables Facility Bret Seufferer and Assistant Foremen Richard Shields and Ed Hull and was represented by UC Express in the person of David Williams.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Breack Bradford was employed by Hy-Vee from March 20, 2003 until June 24, 2004. He was a part-time order selector.

On June 23, 2004, Manager Bret Seuferer and Assistant Foreman Ed Hull talked to the claimant about an incident on June 20, 2004, where another employee, Luke, had been clocked out by Mr. Bradford. The claimant acknowledged he had accidentally done it while trying to log himself out on the computer. He stated he had notified Assistant Foreman Richard Shields of the problem and had been told he would "take care of it."

Mr. Seuferer spoke with Mr. Shields, who denied any knowledge of the event. The claimant was talked to again on June 24, 2004, and given the option of quitting or being discharged for dishonesty. The manager indicated he would have to "go with [his] supervisor" on the issue.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code Section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was given the option of quitting or being discharged, and this is not considered to be a voluntary quit under 871 IAC 24.26(21). The issue is therefore whether he was discharged for misconduct. The employer's assertion is that the claimant was dishonest during an inquiry into how another employee was punched out. Mr. Bradford maintains he notified Mr. Shields, but Mr. Shields has no recollection of being notified regarding the incident. The claimant was very firm and definite on the course of the events and has not altered his version of the events. Mr. Shields does not have any recollection of the event, which does not mean it did not happen, only that he has no recollection of it. Miscommunication of some sort appears to be at the root of the problem, but this does not constitute misconduct.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. The administrative law judge does not find the employer's testimony to be any more or less credible than the claimant's. The evidence being equipoise it must be determined the employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of July 20, 2004, reference 01, is affirmed. Breack Bradford is qualified for benefits provided he is otherwise eligible.

bgh/kjf