

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON E STUBBE
Claimant

APPEAL NO. 09A-UI-17427-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 10/25/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Damon Stubbe, filed an appeal from a decision dated November 13, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 29, 2009. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Vice President of Transportation Jim Moore, Director of Truck Shop Chad Masters, and Assistant Manager of Truck Shop Jon Mathes and was represented by UIS in the person of Tim Spier.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Damon Stubbe was employed by Hy-Vee from November 20, 2007 until October 27, 2009 as a full-time mechanic. His work was generally satisfactory until September 2009, when serious problems began. The claimant was going through some domestic problems and his attendance and work performance deteriorated drastically. He received verbal warning on September 15, 20, 22, and 29, 2009.

On October 10, 2009, he left an hour early without permission or notification to a supervisor. He was placed on a five-day suspension October 12 through 16, 2009, by his supervisor. At that time, he was told his job was in jeopardy if he did not improve his attendance and work performance.

When he returned to work on Monday, October 19, 2009, the problems remained. He would be logging on to his first job an hour after he had clocked in to work. The jobs he did log in to took as much as twice as long as they should have, some were not actually done at all, and others were done so poorly another mechanic had to do the job over again. He logged out for breaks for longer than the allowed time. On October 21, 2009, Assistant Manager Jon Mathes found the claimant staring out a window and when he was asked if there was a problem, Mr. Stubbe said, "I don't think I'm going to do a fucking thing tonight." He eventually did go back to work.

The employer reviewed the claimant's performance at the end of the week and found these many problems. He was contacted October 26, 2009, and told not to come in to work that night but to come in the next day. On October 27, 2009, he met with Vice President Jim Moore, who discussed the prior week's problems. He agreed he was not meeting the work standards as he had in the past. His only explanation was, "Give me a break, I have some fucking problems." He was discharged at that point.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was capable of working to the appropriate standard required by the employer. This is evidenced by satisfactory performance from the time he was hired until September 2009. While it is regrettable the claimant was experiencing personal problems, the employer did what it could to help but ultimately it is Mr. Stubbe's responsibility to either resolve his personal problems, not let them interfere with his work duties or else take time off to resolve them before returning to work.

A willful failure to work to the best of one's ability is conduct not in the best interests of the employer. It is a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant was discharged for misconduct and is disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of November 13, 2009, reference 01, is affirmed. Damon Stubbe is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw