IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ART E KRANTZ
Claimant

HY-VEE INC
Employer

APPEAL NO. 10A-UI-08145-C

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/25/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Art Krantz filed an appeal from a representative's decision dated May 27, 2010, reference 01, which denied benefits based on his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held on August 2, 2010, in Burlington, Iowa. Mr. Krantz participated personally and was represented by William Cahill, Attorney at Law. The employer participated in person by Tad Gallagher, Store Director, and was represented by Dan Speir of Unemployment Insurance Services, who participated by telephone.

ISSUE:

At issue in this matter is whether Mr. Krantz was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Krantz' last period of employment with Hy-Vee, Inc. began in 1994. He was last employed full-time as a bakery manager. He was discharged on April 21, 2010. Part of the reason for the discharge was the allegation that he engaged in conduct unbecoming a manager while attending a meeting in Davenport on April 8. Others reported that he was not "engaged" during the meeting and that he spent meeting time using his phone. When questioned by his store director, Mr. Krantz showed him that he was using his phone to take notes during the meeting. The employer did not present testimony from anyone who attended the meeting with Mr. Krantz.

The other reason for Mr. Krantz' discharge was the allegation that he failed to use the proper procedure for taking vacation time off. He was gone from April 13 until April 20 but did not discuss the vacation with his store director before taking the time off. The employer does not have written procedures for requesting time off, nor is there a uniform procedure for notifying employees of the correct steps to take for requesting time off. Mr. Krantz noted the days he would be gone on the edit sheet near the time clock. He had used this method on at least one prior occasion without repercussions. As a result of not checking with his store director before taking vacation, Mr. Krantz was discharged on April 21, 2010.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's evidence failed to establish that Mr. Krantz engaged in any inappropriate conduct while attending the meeting in Davenport. He showed the employer his phone to establish that he was not talking, only taking notes. This gave the employer an opportunity to confirm or refute his contentions. The employer was unable to testify that the notes he was shown did not originate from the meeting. The employer did not provide any testimony that would establish conduct unbecoming with respect to the Davenport meeting.

It is true that Mr. Krantz did not confirm his vacation plans with his store director. However, the administrative law judge cannot conclude that his failure to do so constituted a violation of a known company rule. There were no written procedures for requesting vacation. There was no evidence that the procedures had been verbalized to Mr. Krantz prior to April 13, 2010. He did not simply disappear without leaving some indication of his intentions. He noted his vacation days on the edit book, a book he presumed would be checked on a daily basis. Moreover, he had used this same procedure for taking vacation on a past occasion and was not told it was inappropriate.

For the reasons stated above, the administrative law judge cannot conclude that Mr. Krantz deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards when he took vacation beginning April 13. At most, his actions represented a good-faith error in judgment. Conduct so characterized is not considered misconduct within the meaning of the law. See 871 IAC 24.32(1). While the employer may have had good cause to discharge Mr. Krantz, conduct that might warrant a discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated May 27, 2010, reference 01, is hereby reversed. Mr. Krantz was discharged by Hy-Vee, Inc. but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw