

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L DOWNS
Claimant

APPEAL NO. 10A-UI-05992-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/28/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Robert Downs filed an appeal from a decision dated April 16, 2010, reference 01. The decision disqualified him from receiving unemployment insurance benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 25, 2010. The claimant participated on his own behalf and with witness, Judy Downs. Hy-Vee participated by Manager of Store Operations Kurt Sills, Floral Manager Kara Hagge, and was represented by Unemployment Insurance Services in the person of Daniel Speir. Exhibits One through Four were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses, the administrative law judge finds: Robert Downs was employed by Hy-Vee from July 8, 1988 until March 24, 2010 as a full-time delivery driver. On September 17, 2009, he received a written warning when a customer complained that he was driving the company van erratically. The employer determines who the driver is of the van when a customer complaint comes in by determining whether the customer has a number from the van. If not, information is taken to determine where the incident occurred and which driver would have been in that area at the time. Mr. Downs did sign the warning and did not take the opportunity to write any employee comments on the warning before signing it. He felt there was doubt that he was actually the driver about whom the complaint was made.

The claimant was given a second written warning and a one-day suspension on March 15, 2010. Two separate customers called in to complain about the claimant's erratic driving. The allegation was that he had tried to pass three vehicles and had to pull over abruptly, forcing two of the vehicles into the ditch. Mr. Downs was given that warning but again did not take the opportunity to write any comments denying the incident. That warning notified him that there would be a discharge if there were any further customer complaints or violations.

On March 24, 2010, the Urbandale Police Department contacted the employer because the claimant's van had struck a parked vehicle after delivery, and he had left the area. It was determined that Mr. Downs had been the driver in question and he was ordered to go back to the scene of the accident. He was cited for leaving the scene of an accident. He maintained he was unaware of the fact that he had struck another vehicle and that is why he had left the area. When Mr. Downs returned to Hy-Vee with his citation he was discharged by Manager of Store Operations Kurt Sills and Store Director Brett Bremser.

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 advised his job was in jeopardy as a result of the complaints about him and his operation of the company vehicle. There were two warnings of very short order along with a third incident of leaving the accident. As a driver the claimant is charged with operating the company vehicles in a safe manner and not jeopardizing the safety of himself or other drivers. Three incidents in such a short period of time indicate a problem. The claimant has not provided any evidence as to who else might have been driving in the area where he was assigned and was the cause of the complaints. He has not successfully rebutted the employer's testimony that he was guilty of misconduct and the administrative law judge must conclude he was, in fact, at fault. The claimant was discharged for a violation of company code of conduct which is a violation of the duties and responsibilities the employer has the right to expect of an

employee. This is conduct not in the best interest of the employer and the claimant is disqualified.

DECISION:

The representative's decision of April 16, 2010, reference 01, is affirmed. Robert Downs is disqualified and benefits are withheld until he has requalified by earning ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs