

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER SCHABEN
Claimant

APPEAL NO. 08A-UI-07826-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/13/08 R: 01
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Roger Schaben (claimant) appealed an unemployment insurance decision dated August 22, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2008. The claimant participated in the hearing. The employer participated through Chris Bryant, Store Director; Aaron Rihner, Manager of Store Operations; and employer representative Daniel Speir. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time night stocker on November 18, 2006 and became a full-time assistant manager in approximately June 2007. He was repeatedly counseled about attendance and reliability. The claimant was late for work on November 27, 2007; and when he was late again on December 6, 2007, the employer discussed reducing his hours to part-time. The claimant said he could not afford to go part-time, so the employer issued him a final warning. He was a no-call/no-show on March 11, 2008, although his wife did call in to check as to whether he called in his absence. When he did not call or report to work on May 11, 2008, the employer called him. The claimant said he was sick and was not coming in and would not be in on May 12, 2008, either. He called in on May 13, 2008 to ask if he worked at 5:00 p.m., and the assistant director told him he did but could come in at 4:00 p.m. if he wanted to do so. The claimant said that would be fine, but called the store at 4:22 p.m. to say he would not be in. He did not ask to speak with the assistant director. The final incident occurred on June 15, 2008, when the claimant twice asked the manager of store operations if he could leave early. The manager told him both times that he could not leave, as

he was needed to finish his shift, but he subsequently walked off the job without speaking to the manager. The claimant was suspended for one week and discharged on June 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination after demonstrating a consistent pattern of unreliability. Insubordination does not equal misconduct if it is reasonable under the circumstances. City of Des Moines v. Picray, (Unpublished, Iowa App. 1986). The claimant's insubordination was not reasonable under any circumstances, since he left work against his employer's directives. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 22, 2008, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw