

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**WILLIE E DICKENS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 14A-UI-06568-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/25/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 16, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 17, 2014. Claimant participated personally. Employer participated by represented Sabrina Bentler and a Hy-Vee store manager.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 23, 2014. Employer discharged claimant on April 24, 2014 because claimant acted in a manner unbecoming of a Hy-Vee employee when he verbally insulted another employee using foul language.

Claimant had worked for employer for over four years, and was responsible for cleaning up the store while night stocking took place. Over his four years of employment, claimant received one verbal reprimand two years ago for not following a directive from a supervisor.

On April 23, 2014 claimant got into a dispute with another Hy-Vee employee. The Administrative Law judge heard hearsay testimony that a worker heard claimant being loud and stated, "Oh boy, someone's being loud over there." Claimant then allegedly responded calling the woman a series of foul words. Claimant stated that the events occurred differently. He stated that the other employee stated, "quiet down, boy." Claimant said that he took these words to be a verbal affront. Although he knew upon reflection that he should have gone to management, at the time he was very upset, and responded calling the woman ugly and stupid with many foul words.

Employer decided that this action could not be tolerated, as it violated the store's policies on respecting other employees. They met with claimant the next day and terminated his employment.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Dep't of Job Serv., 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Dep't of Job Serv., 425 N.W.2d 679 (Iowa Ct. App. 1988). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. Crosser v. Iowa Dep't of Pub. Safety, 240 N.W.2d 682 (Iowa 1976). In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning mistreatment of coworkers. Claimant was not warned concerning this policy, but did receive an employee handbook years before the incident took place.

The last incident, which brought about the discharge, fails to constitute misconduct because employer had it within its power to produce the other person involved in the altercation and chose not to do so. The store manager's investigation did not explore the background to the incident and did not ask for the input of any of the other employees in the immediate vicinity at the time of the occurrence. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 16, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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