

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOSHUA S MCGOWAN
217 BEECH ST
AURELIA IA 51005

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

TALX UC EXPRESS
3799 VILLAGE DR #511
DES MOINES IA 50317

NUNC PRO TUNC
Appeal Number: 05A-UI-11628-DWT
OC: 10/16/05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's November 1, 2005 decision (reference 01) that concluded he was disqualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate at the hearing. As a result, no one represented the claimant. David Williams, a representative with TALX, appeared on the employer's behalf. Lisa Walton and Todd Hockinson testified on the employer's behalf. Debra Powell observed the hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 1, 2004. The claimant worked as an order selector.

On March 24, 2005, the claimant received a final written warning. The claimant received the final warning for multiple problems. One of the problems was an attendance issue.

On September 27, the local sheriff went to Walton's office because the claimant had two outstanding warrants. After the claimant went to Walton's office, the sheriff arrested the claimant. The claimant asked Walton how his arrest would affect his continued employment. Walton told the claimant he needed to contact Hockinson as soon as he was released from jail.

The claimant was released on September 27. He was not scheduled to work again until September 30, 2005. The claimant did not contact the employer after he was released from jail. Instead, he just reported to work as scheduled on September 30, 2005. The employer had no idea if the claimant would be working as scheduled on September 30.

When the employer asked the claimant why he had not contacted Hockinson immediately, the claimant indicated he thought it would be all right to just report to work even though the employer told him to call as soon as he was released before he went to jail on September. If the claimant had contacted the employer as instructed, he would not have been discharged. Since the claimant did not follow the employer's instructions and displayed an "I don't care attitude," the employer discharged the claimant on September 30, 2005. The employer told the claimant he was discharged for not following the employer's instructions and for not working as scheduled on September 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant realized his job was in jeopardy when he was arrested at work on September 27, 2005. The facts show that the employer told the claimant and the claimant understood that he needed to contact the employer as soon as he was released from jail. When the claimant was arrested, the employer had no idea when the claimant would be released or if he would be able to work as scheduled on September 30, 2005. Although

the claimant was released on September 27, he never contacted the employer. Instead, he just reported to work as scheduled on September 30, 2005. The claimant's failure to follow the employer's instruction to call the employer when he was released from jail amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee, especially an employee who has received a final written warning. Under the facts presented during the hearing, the employer discharged the claimant for reasons constituting work-connected misconduct. As of October 16, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 1, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 16, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/s/da