

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMANDA L BOONE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 18A-UI-11849-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/11/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Amanda Boone, Claimant, filed an appeal from the November 30, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Hy-Vee, Inc. for causing dissension among other employees. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2019 at 3:00 p.m. Claimant participated. Employer participated through Barbara Buss, Hearing Representative; Jeramie Guy, Store Director; Pauline Fisher, Pharmacy Technician; Heather Hillyer Pharmacy Technician; and Taylor Clark, Pharmacy Technician. Claimant's Exhibits A and B were admitted. Employer's Exhibits 1 through 10 were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Staff Pharmacist from February 2, 2009 until her employment with Hy-Vee, Inc. ended on November 12, 2018. (Guy Testimony) Claimant's direct supervisor was Sameer Amra, Pharmacy Manager. (Guy Testimony)

Claimant's employee performance review in October 2018 noted that claimant is "quick to slander coworkers to customers which is unprofessional and portrays Hy-Vee/Pharmacy profession in a negative manner." (Exhibit 6) Claimant signed her performance review. (Exhibit 6) During claimant's annual review, she was warned that continued slander of coworkers would not be tolerated. (Guy Testimony)

Employer has a policy prohibiting harassment and discrimination. (Exhibit 8) The policy states that employees should treat each other with dignity and respect and acknowledges that employees should be able to work in an environment free from discrimination and harassment. (Exhibit 8) The policy strictly prohibits harassment and discrimination, including national origin discrimination or harassment. (Exhibit 8) The handbook states that violation of any policy will result in discipline up to and including termination. (Exhibit 7) Claimant received a copy of the handbook. (Exhibit 10)

Claimant received a warning in July 2014 for creating an atmosphere of hostility for her coworkers by making comments to coworkers and customers. (Exhibit 1) The warning advised

claimant to demonstrate a professional attitude and to work in a respectful way towards customers, managers and coworkers. (Exhibit 1) The warning stated that failure to do so may lead to disciplinary action up to and including termination of employment. (Exhibit 1) Claimant signed the warning. (Exhibit 1)

On Friday, November 2, 2018, it was reported to employer that claimant had made statements regarding her supervisor's citizenship to coworkers and in the presence of customers. (Guy Testimony) Employer initiated an investigation that included collecting statements from witnesses and reviewing the matter with its human resources department. (Guy Testimony) Employer's investigation revealed that claimant made disparaging statements about her supervisor to co-workers and in the presence of customers including stating that her supervisor was sexist and that her supervisor was not a United States Citizen. (Exhibit 3, Exhibit 4, Exhibit 5) Claimant also made disparaging statements about her coworkers to customers. (Fisher Testimony) Claimant's statements made her coworkers uncomfortable and reduced customer's confidence in the pharmacy. (Hillyer Testimony; Fisher Testimony) These comments were made frequently and as recently as claimant's last week of employment. (Fisher Testimony)

On November 12, 2018, employer discharged claimant for conduct unbecoming of a Hy-Vee employee based upon claimant's derogatory statements about her supervisor made to coworkers and in the presence of customers. (Guy Testimony)

Claimant admits that she believes her supervisor is sexist and that she told her coworkers of her belief; however, claimant denies making these statements to or in the presence of customers. (Claimant Testimony) Claimant denies making any derogatory statements regarding her supervisor's citizenship to her coworkers or customers. (Claimant Testimony) Claimant's explanation for her coworkers' testimony to the contrary is that they either took the statements out of context or they were forced to make false statements by their supervisor and the store director. (Claimant Testimony) Claimant alleges that she had no reason to believe that her job was in jeopardy. (Claimant Testimony)

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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

(4) Report required. The claimant's statement and 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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.*

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence,

memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's version of those events. Claimant admits to telling her coworkers that she believes their supervisor was sexist but denies making these statements in the presence of customers. Claimant denies making comments regarding her supervisor's citizenship and alleges that her coworkers either took her comments out of context or were forced to make false statements by employer. Three of claimant's coworkers credibly testified that claimant made derogatory comments regarding their supervisor to coworkers and in the presence of customers. These coworkers provided detailed statements regarding claimant's comments including the date some comments were made, to whom and in whose presence they were made, and the content and context of the comments. It is unreasonable that three coworkers took claimant's frequent comments about her supervisor's citizenship out of context. Claimant provides no credible reason why these three coworkers would make false statements at their employer's request. Finally, claimant signed her performance review, which included a warning about slandering her coworkers, a month before her termination. Claimant's testimony that she did not believe her job was in jeopardy also lacks credibility.

Claimant knew, or should have known, that her job was in jeopardy if she continued to make slanderous comments regarding her supervisor. However, claimant made such comments frequently and as recently as the week her employment was terminated. Claimant's comments were a deliberate violation or disregard of the employer's harassment and nondiscrimination policies and the standards of behavior which Hy-Vee has a right to expect from its employees. Employer has met its burden of providing claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The November 30, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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