IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL K MATSON
Claimant

HY-VEE INC
Employer

APPEAL NO. 07A-UI-07956-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/15/07 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated August 10, 2007, reference 01. The decision allowed benefits to the claimant, Michael Matson. After due notice was issued, a hearing was held by telephone conference call on September 4, 2007. The claimant participated on his own behalf. The employer participated by Manager of Store Operations Matt Schweizer, Wine and Spirits Manager Chad Nyhus, and was represented by TALX in the person of David Williams. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Michael Matson was employed by Hy-Vee from May 4, 2003 until July 19, 2007, as a part-time assistant manager. He received a copy of the employee handbook during the course of his employment. One of the policies prohibits the possession of alcohol on the company premises, whether on or off the clock, and violation of the policy is grounds for discharge.

On July 18, 2007, a friend of the claimant's came in to the store and bought beer. The claimant was off work and left very shortly after his friend left the store. Wine and Spirits Manager Chad Nyhus saw the claimant's car parked next to his friend's car in the parking lot and asserted he saw "something" being transferred from the friend's car to Mr. Matson's. It was assumed to be the beer the friend had just purchased.

The incident was reported to Manager of Store Operations Matt Schweizer and the next day the claimant was questioned. He denied the beer was transferred to his car but did admit to drinking beer, even though he is not legally old enough to consume alcohol, at the friend's apartment later that evening. He was discharged.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the only eyewitness did not see exactly what was being transferred between the claimant's car and that of his friend, and it was only "assumed" it was the beer the friend had just purchased. As the claimant has denied any such transfer of the alcohol on company property, this assumption is insufficient as rebuttal. The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of August 10, 2007, reference 01, is affirmed. Michael Matson is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css