

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

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c/o TALX EMPLOYER SERVICES
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ST LOUIS MO 63166-0283

TALX EMPLOYER SERVICES
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Appeal Number: 06A-UI-07889-DT
OC: 06/26/06 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:

Andrew M. Hansen (claimant) appealed a representative's July 26, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 22, 2006. The claimant participated in the hearing and presented testimony from one other witness, Alice Lehman. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Brandon Lampkin, Jenny Bisbee, and Jim Hansen. During the hearing, Employer's Exhibit One was entered 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 8, 2004. He worked full time as an assistant manager at the employer's Red Oak, Iowa, store. His last day of work was June 22, 2006. The employer discharged him on June 23, 2006. The stated reason for the discharge was failure to follow proper procedures regarding giving out of Western Union account information.

On June 17, 2006, while the claimant was working at the customer service desk, he took a call from someone who stated they were calling from Western Union. During part of the conversation, the caller asked the claimant to verify his identification using the "bingo card" provided by Western Union with identification verification coding. The claimant complied and provided the requested code from the card. Ms. Bisbee, another assistant manager, was present and tried to tell the claimant he was not supposed to provide Western Union codes to any callers, but the claimant proceeded to do so. Unbeknownst to either the claimant or the employer until June 23, the caller used the provided Western Union code to make a transfer from the employer's Western Union account to an unidentified recipient on the east coast in the amount of \$999.99, just below the Western Union threshold for requiring identification by the recipient; the processing fee assessed to the employer's account for the transaction was \$74.01.

Still prior to learning of the June 17 charge to the employer's Western Union account, on June 22 the claimant, again working at the customer service desk, received another call from someone purportedly from Western Union. Again during the call the caller asked the claimant to identify himself by providing a verification code from the "bingo card," and again the claimant complied and provided the requested code. On June 23 the employer learned that this also had resulted in charge to the employer's Western Union account for \$1,074.00 for another transfer again to unnamed recipient at the same east coast location.

Neither prior to nor during either transaction did the claimant examine the "bingo card" from which he obtained the verification codes. The codes are offset on the left-hand side of the card. However, in the middle of the card in larger font than the codes to the left is first the underscored, capitalized, and bolded word, "WARNING." Below this, also in larger font than the codes, the card states, "NEVER DIVULGE THE CONTENTS OF THIS CARD TO ANYONE EXCEPT WHEN YOU CALL THE CTB. WE WILL NEVER CALL YOU AND ASK FOR NUMBERS." The claimant testified he had never been trained as to how to handle Western Union issues regarding providing verification numbers off the "bingo card." However, he had no particular reason other than being busy as to why he did not read the clear warning on the card, particularly before the second occurrence after Ms. Bisbee had made the statement to him on the first occurrence that he should not be giving that information out to a caller.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

While one instance of failing to see, read, and follow the warning might be construed as isolated instance of ordinary negligence, having a second incident, particularly after being put on some notice that there might be a problem giving out the numbers, raises the claimant's carelessness or negligence to the level of showing 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 26, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 23, 2006. This disqualification continues until the claimant 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.

ld/kjw