

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES A VANSTEENBURG
Claimant

HY VEE INC
Employer

APPEAL 20A-UI-02651-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On March 27, 2020, the claimant filed an appeal from the March 17, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 28, 2020. Claimant participated personally and was represented by attorney Todd Klapatauskas. Employer participated through human resource manager Chas Wiepert, store manager Steve Deutmeyer, manager of perishables Jeff Buxton, and meat manager Alan Helle. Employer was represented by Barbara Buss. Employer's Exhibits pages 1 through 21 were admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 9, 2009. Claimant was separated from employment on February 25, 2020, when he was terminated.

Claimant was last employed in the seafood department on a full-time basis. Claimant was responsible for making sure the seafood department ran smoothly. Specifically, claimant was responsible for making sure the bunkers were clean and filled with seafood and that seafood was put out for sale before its expiration date. These responsibilities fell on claimant even on his time off. Claimant was allowed to delegate work to other employees to fulfill his responsibilities.

Employer's store policy is that seafood should be sold to customers within 5 to 7 days of being delivered to the store. Claimant was aware of that requirement.

On July 25, 2019, employer gave claimant a written warning about keeping the bunkers full of seafood.

On January 14, 2020, employer gave claimant a written warning regarding keeping the bunkers full. Claimant was allowed to give written comments in response. Claimant stated that he felt the problems with the fresh fish always occur when he returns to work from a day or days off. Claimant stated that when he is gone, it seems that nothing gets done in the seafood department.

Claimant went on a scheduled vacation from February 20, 2020, until February 25, 2020. Claimant's last day of work was February 19, 2020.

Earlier that week, claimant mistakenly made a special-order seafood tray a week too early. Claimant put the seafood tray out for sale at a discounted rate, but it did not sell.

On February 19, 2020, claimant filled the bunkers with seafood. Claimant also spoke with assistant meat manager Kevin about what needed to happen while he was gone. Claimant noted that the seafood tray had not sold, so he put it back in the cooler and asked Kevin to break it down and try to sell it in smaller increments. Claimant also knew that there was salmon and cod nearing its expiration date. Claimant filled the bunkers with as much salmon as possible and gave Kevin instructions for the rest of the fish.

On February 22, 2020, at 4:20 p.m., meat manager Alan Helle sent an email to store management stating that Kevin threw away two cases of Tilapia, a half case of salmon, the seafood tray, and other smaller items that he felt like should have been dealt with days earlier.

On February 25, 2020, claimant returned from vacation. When claimant returned, store management met with him and terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, store policy was to sell fresh seafood within five to seven days of arriving at the store. Regardless of whether claimant was the seafood clerk or the seafood manager, it is clear he had the sole responsibility of making sure seafood was sold before it spoiled, even when he was not at the store. Of course, like any employee, claimant was allowed to take some time off to see his family. Claimant filled the bunkers and gave directives to assistant seafood manager Kevin before he left. Claimant testified he did this. Kevin did not appear at the hearing. I find claimant's testimony credible. Kevin did not move the product out to the floor and it was spoiled and had to be thrown away three days later. Given the nature of seafood, that is not surprising. What more could claimant have done? As claimant pointed out in his January warning, the issues always happened on his days off. The arrangement to only have one point person on seafood might not have been working, but employer did not establish it was because of claimant's misconduct. Benefits are allowed.

Because benefits are allowed, the issue regarding overpayment of benefits is moot and will not be discussed further in this decision.

DECISION:

The March 17, 2020, (reference 01), unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
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May 11, 2020
Decision Dated and Mailed

cal/scn