

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHEILA M SCHOENHERR
Claimant

HY-VEE INC
Employer

APPEAL NO. 16A-UI-05869-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 11, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 10, 2016. Claimant participated personally. Employer participated by hearing representative Sabrina Bentler, and witnesses Rodney Myers, Jill Tuttle, Katie Good, and Dan Owens. Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 26, 2016. Employer discharged claimant on April 26, 2016 because claimant spread rumors that the store manager of employer was having an affair or affairs with other employees from the store. Claimant stated that employee's actions were intentional and in violation of policies promoting honesty, sincerity, respect, ethics, and morals. Store policies state that violations of these fundamentals will result in disciplinary action up to termination.

Claimant admitted that she spread rumors concerning the store manager's alleged infidelity. She said that she heard these rumors from other employees, but had no personal facts to support the rumors. Still claimant told coworkers. She stated that she was upset that other coworkers had voiced opinions that claimant was on drugs and was a poor parent, and when she approached management with these statements, others weren't terminated. As others weren't terminated claimant believes she should not be allowed to receive disparate treatment.

Employer stated that it investigated each of the alleged incidents reported by claimant. It did separate claimant and a coworker and remove both parties from the grill section. Employer stated that it could not act any further than this because it was left with a "he said, she said" situation without the ability to determine who was telling the truth.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning spreading rumors about the store manager. Claimant's only intent in spreading these rumors was to create further discord within the store. There was no legitimate business or personal reason for claimant's actions other than claimant's attempt to maliciously hurt her manager.

The last incident, which brought about the discharge, constitutes misconduct because claimant's actions were willful and against the interest of her employer. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 11, 2016, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs