

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

MATT J HARDIN  
320 – 2<sup>ND</sup> ST #135  
CORALVILLE IA 52241

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

HY-VEE  
c/o TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 04A-UI-10618-DWT  
OC: 09/05/04 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's September 21, 2004 decision (reference 01) that concluded Matt J. Hardin (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 21, 2004. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf. Jamie Elliott, the manager of store operations, Tiffany Yoder, the personnel manager; and Rebecca Haring appeared on the employer's behalf. Marla Gentry and Scott Thomas observed the hearing. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 21, 2002. He worked as a full-time stocker and ordered supplies. Elliott was his immediate supervisor.

On August 26, 2004, Haring talked to the claimant about a special order for a customer. When Haring told him that he had overstepped his job duties, the claimant indicated that he was just trying to help the customer. Haring reported to Elliott that the claimant used the word "f" word when he had talked to her. Elliott talked to the claimant and told him that Haring felt threatened by him. The claimant apologized to Haring because he had not intended to threaten or harass her.

On August 31, 2004, the claimant hurt his back at work and was seen by a doctor. The claimant was released to return to work with restrictions. As a result of the restrictions, the employer had the claimant working at a cash register. The employer knew the claimant's back still bothered him after the doctor saw him.

The claimant worked as scheduled at the cash register on September 1. On September 2, the claimant's back hurt so much he asked Yoder if he could skip his lunch and leave work an hour early. When the claimant told Yoder about his back, he described his back as "fucking" hurting. Yoder tried to contact management who had the authority to guarantee the claimant would be paid for a full day of work if he left work early. She was not successful. Yoder also tried to get the claimant into physical therapy on September 2. She was not successful with this attempt either.

When the claimant came to Yoder's office, she gave him permission to leave work early but could not guarantee that he would get paid for a full day of work if he left early. The claimant was upset because his back hurt him so much. Yoder understood the claimant believed the employer was going to discharge him. Even though she told him that only the store director could make that decision, the claimant still appeared frustrated and upset. He told Yoder that this was bullshit. The claimant made this remark while he was standing on the other side of Yoder's desk. Yoder knew the claimant was very frustrated. Yoder, however, did not know what the claimant would do next and he frightened her. Yoder made some conclusions about the claimant because she knew he was involved in boxing. Yoder asked the claimant to sit down, which he did without being asked a second time to do. Yoder then called Elliott back to the store and reported that the claimant was threatening her.

After Elliott returned to the store, he understood the claimant was in a great deal of pain. When the claimant explained the pain he experienced to Elliott, he used the "f" word. Since Elliott did not have any authorization to guarantee that the claimant would be fully compensated for a full day of work, he had the claimant take his lunch break and wait for the store director to return. After the store director returned, the employer discharged the claimant for threatening Yoder.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected

misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes Yoder felt threatened by the claimant when he was in her office. Yoder came to feel this way not only by how the claimant acted and appeared on September 2, but she also knew the claimant liked boxing. While Yoder could not help that she felt threatened by the claimant in her office, the evidence does not indicate the claimant intended to threaten Yoder or anyone else on September 2. Instead, the claimant was in so much pain, his objective was to go home without losing any pay.

The claimant's use of profanity is not condoned. Even though the claimant denied that he used the "f" word on September 2, the employer's testimony indicates the claimant commonly used this word when he talked to employees. The facts suggest the claimant may not realize when he uses this word or even how often he says it.

The employer established a business reason for discharging the claimant. The evidence does not, however, show that the claimant intentionally violated the standard of behavior the employer had a right to expect from him. Therefore, as of September 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

#### DECISION:

The representative's September 21, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf