

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY W HANSON
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-01674-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/27/19
Claimant: Appellant (2)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – DM – Discharge for misconduct

STATEMENT OF THE CASE:

Rodney Hanson, Claimant, filed an appeal from the February 15, 2019 (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Hy-Vee, Inc. due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on March 12, 2019 at 1:00 p.m. Claimant participated. Employer participated through Melissa Hill, Hearing Representative; Carley Pedelty, Human Resources Manager; Jenni Adamson, Night Manager; and Jerry Havermann, Assistant Store Director. Employer's Exhibits 1 – 10 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a night stock clerk from June 13, 2018 until his employment with Hy-Vee Inc. ended on January 17, 2019. (Pedelty Testimony) Claimant's direct supervisors were Jenni Adamson and Michael Carley. (Pedelty Testimony)

Employer has a code of conduct which prohibits verbal abuse and profanity. (Exhibit 10) The code of conduct states that violation of any rule, policy or procedure will result in disciplinary action up to and including termination. (Exhibit 10) The code of conduct is contained in the employee handbook. (Pedelty Testimony) Claimant received a copy of the handbook. (Claimant Testimony)

On December 13, 2018, employer heard claimant use profanity and responded by yelling "language." (Adamson Testimony) Employer did not give claimant a formal verbal or written warning or tell claimant that he would be discharged if he used profanity at work in the future. (Adamson Testimony) On January 15, 2019, claimant asked a co-worker, "where you been, dickweed?" (Pedelty Testimony) On January 17, 2019, employer discharged claimant for

conduct unbecoming of a Hy-Vee employee for using profanity towards a coworker. (Exhibit 1)
Claimant did not know his job was in jeopardy. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employer's statement to claimant on December 13, 2018 does not constitute a warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Employer has not met its burden of proving disqualifying, job-related misconduct. Therefore, claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The February 15, 2019 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs