

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY SCHMITT
Claimant

HY-VEE INC
Employer

APPEAL NO. 14A-UI-03090-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Jeffrey Schmitt (claimant) appealed an unemployment insurance decision dated March 10, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2014. The claimant participated in the hearing. The employer participated through Jackie Kuennen, Human Resources Manager; Tyler Krout, Market Manager; and Pamela Kiel, Employer Hearing Representative. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time meat specialist from April 10, 2006, through February 14, 2014, when he was discharged for repeated disruptive behavior and failure to work as a team member. The most significant problem was the fact that the claimant and co-worker Jeff Schmit did not like each other and could not get along. This problem made customers and co-employees uncomfortable and had to involve management on multiple occasions due to the escalation of hostilities.

Human Resources Manager Jackie Kuennen, Store Director Denny Hartogh and Market Manager Rich Riggs spoke to the claimant and Mr. Schmit on March 23, 2012 about concerns regarding the co-employee's bickering and inability to work with each other. They were specifically advised they needed to respect each other, work as a team, cease and desist about talking bad about each other, and the claimant needed to improve his attitude. The claimant received a formalized warning on January 4, 2013, when Ms. Kuennen, Mr. Riggs and Zach Shank spoke to both employees about their attitudes towards each other. The claimant was advised that the tension between them was creating an unsuitable work environment with their

customers and co-workers. They were reminded that they had repeatedly discussed this and that if they were not able to communicate with each other, they would no longer have a job.

The claimant received an additional warning on August 10, 2013, for poor work performance resulting from a customer's complaint. The customer had also complained that when a problem was brought to the claimant's attention, he offered excuse and no apology, and did not have a "helpful smile." The claimant received a final warning and suspension on September 19, 2013, for continued problems with his demeanor in that he was offensive to one customer and abrasive to a different customer.

The termination occurred after another incident between the claimant and Mr. Schmit on February 7, 2014, wherein they displayed unacceptable behavior towards each other, as well as providing improper customer service. Mr. Schmit reported he told the claimant he was going to the deli to slice a ham but the claimant did not respond. The claimant subsequently called for Mr. Schmit over the loudspeaker multiple times. Meat Manager Tyler Krout had to become involved and took both employees in the back to find out what was going on and he said, "I had to scream to get them to knock it off!" Mr. Krout acknowledged the two do not like each other but said they had to get along. Sara Kasemeier spoke to both parties about the incident on February 8, 2014, and informed them that she would have to talk to the store director about it when he returned from vacation. Director Hartogh returned and both employees were discharged on February 14, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 14, 2014, for repeated disruptive behavior after multiple warnings. He contends that the problems were all attributable to his co-employee but he was not discharged for his co-employee's actions, he was discharged for his own actions. Likewise, he could not change his co-employee's behavior but he could change his own and he failed to do that. The claimant's conduct shows 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 10, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css