

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHANE L ECKHOLM
Claimant

APPEAL NO. 10A-UI-14920-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/21/10
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 21, 2010, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 6, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Bob Wilson. Tim Speir participated in the hearing on behalf of the employer with witnesses Linda Pochobradsky and Jeff Hubler. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer from May 29, 2008, to May 5, 2010. He had been working as a night stocker. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant was off work due to an injury to his back after May 5, 2010. He had reported the injury as work-related, but the claim was denied by the employer's workers' compensation insurer in June 2010. He was excused from working by his doctor through August 25, 2010, and granted a leave of absence from the employer. Under the terms of the leave, he was required to return to work when the leave expired or request an extension of the leave supported by a medical certificate, but no automatic approval of the extension would be granted. He was informed that he was required to periodically report to his supervisor regarding his work status and intent to return to work. The claimant had been warned by management that he could not simply fax things in but was required to personally update his supervisor regarding his work status.

On August 23, 2010, the claimant saw his doctor regarding his injury. His doctor excused him from working from August 23 to December 31, 2010, because of his injury. The claimant had the doctor fax a written excuse to the employer's corporate headquarters, but no one involved with the claimant's leave was aware of the leave. The claimant violated the instructions given him by failing to request an extension of his leave and by failing to notify his supervisor about his need for additional time off. He had not spoken to anyone with the employer since June 2010.

When the claimant failed to report to work on August 25 or afterward, and failed to notify the employer about any continued need to be off work, the human resources manager, Linda Pochobradsky, sent a letter to the claimant on August 26 stating he needed to contact her by September 1, 2010, or his employment would be terminated. The claimant never picked up the letter. He ended up calling Pochobradsky on September 22 to inform her that he could come back to work, provided he did not work on the night shift. Pochobradsky informed him that he had been terminated. The claimant called Pochobradsky again on September 30, 2010, and said he had submitted a doctor's excuse back in August and would resubmit it. Pochobradsky told him it was too late to submit the doctor's excuse.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While I believe the claimant has been unable to work since May 5, 2010, it is the claimant's failure to follow instructions given to him regarding notification of the employer about his work status that is the issue in this case. He had been instructed (1) to contact his supervisor about his work status, and (2) that he could not fax something in without following up personally with his supervisor. The claimant willfully violated these instructions. His conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 21, 2010, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw