IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANTHONY KAUFFMAN
Claimant

HY-VEE INC
Employer

APPEAL NO: 11A-UI-13895-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-02-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 20, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 16, 2011, and continued on November 23, 2011. The claimant participated in the hearing. Carla Heffren, assistant vice-president of warehousing; Randy Regennatter, department manager second shift gGrocery; Jeff Kent, facility manager; and Paula Mack, employer representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse special order selector for Hy-Vee at the Chariton Distribution Center from June 25, 2008 to October 4, 2011. On September 30, 2011, Department Manager Second Shift Grocery Randy Regennatter went to look for the claimant because Assistant Vice-President of Warehousing Carla Heffren wanted to meet with him about three recent incidents. As Mr. Regennatter approached the claimant, he noticed the claimant had placed cases of product on the stock picker platform, which lifts 30 feet in the air, and one case was depressing the brake, which had to be released to work. Mr. Regennatter told the claimant that was a safety violation and the claimant stated all the stock pickers did it and it was the difference between 130% and 110%. Employees are paid a base salary and increase their revenue based on the amount of product placed, which is determined by how fast they work. After delivering the message regarding the claimant's meeting with Ms. Heffren, Mr. Regennatter drove around to see if other stock pickers were doing what the claimant was, as far as depressing the brake or having product on their platforms, but the other stock pickers he checked were not doing so. The claimant's actions were a safety, as well as an OSHA, violation and Mr. Regennatter reported the incident to the employer.

The claimant was trained in proper procedure July 18, 2009 and August 11, 2011, and signed off indicating he received the training. On September 16, 2011, the claimant was placing pallets 24 feet in the air on a shelf and part of a pallet was left hanging over the edge which could have fallen and severely injured another employee on the ground or the claimant. The claimant tried to call his manager over the intercom; but, when he could not reach him, he went to break and then reported the incident to Mr. Regennatter, who looked at the pallet and told him if he could not reach his manager he should have at least parked his fork truck in front of the area to prevent injury while he looked for his manager. On September 23, 2011, the claimant misplaced a pallet, which then partially collapsed, causing product damage, which the claimant did not report. Mr. Regennatter had several other fork truck drivers fix the problem and decided to take the claimant off the stock picker because the September 23, 2011, incident was the second in a short period of time and he felt someone else needed to address the issue due to the frequency of safety violations. Additionally, the claimant was sent home for not wearing the required footwear September 28, 2011. The claimant was allowed to select approved footwear and the employer paid for it. The claimant could not find his high top boots before work that day and did not tell anyone he could not find his boots but instead started working and worked without the proper footwear until Mr. Regennatter noticed he did not have the approved boots on and sent him home to get his approved boots. The claimant found his boots on a coat rack in the locker room and, consequently, did not have to go home. Before a meeting regarding the above stated issues could be held, however, the September 30, 2011, incident occurred; and when Ms. Heffren learned of that situation, she suspended the claimant for altering the stock picker and then terminated his employment October 4, 2011, for safety violations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 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.

871 IAC 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.

The claimant admitted intentionally placing the box of product on the brake, intentionally depressing it, which caused it to disengage, as the operator had to release the brake with his foot to stop the stock picker. The claimant told Mr. Rigennatter all of the operators did it and placing a box of product on the brake was the difference between doing 130% and 110%, indicating a consciousness of his actions and that it was not simply a mistake that part of a case of product was placed partially over the brake. Mr. Rigennatter also checked to see if the other stock pickers were doing the same thing and could not find one that was doing so. The stock pickers run on a magnetic strip and the operator controls the speed, movement, and braking of the machines, which can reach 30 feet in the air. Altering the brakes on that machine was a serious safety risk to the claimant, as well as others, and, coupled with his failure to report improper placement of the pallets on September 16 and 23, 2011, and failure to wear the required footwear September 28, 2011, demonstrates a serious lack of concern over safety risks, issues, policies and procedures. Under these circumstances, the administrative law judge concludes the claimant's conduct was not an isolated incident and demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The October 20, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/kjw