

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA A WATTS
Claimant

APPEAL NO. 11A-UI-12702-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 08/28/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 16, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Mark Ornsby. John Fiorelli participated in the hearing on behalf of the employer with witnesses, Tod Hockenson and Karla Heffron. Exhibits One through Five 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 as a warehouse generalist from September 10, 1997, to August 25, 2011. He was informed and understood that under the employer's work rules, harassment, intimidation, and bullying were prohibited.

On January 9, 2008, the claimant was warned and suspended for acts of intimidation and bullying toward coworkers. On September 14, 2010, the claimant again was warned and suspended for directing profanity toward an employee at work. He was told that any further occurrences of harassment, intimidation, or bullying in the workplace could result in termination.

On about August 19, 2011, the claimant sent a text message to a coworker outside of work stating, "Since u turned out to be a bitch and neither you or I have anything to do with each other, tell ur wife she can stop talking to me and waving." Around the same time, the claimant send another text message to another coworker stating, "Dude u don't need to throw me ur little sarcastic wave. We ain't friends. U just do ur thing at work and I'll do mine."

The coworkers later reported the text messages the claimant had sent to them and that the claimant had engaged in intimidating behavior toward them at work. After conducting an investigation, the employer discharged the claimant on August 26, 2011, for violating the employer's policies and the prior warnings he received regarding intimidating conduct.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer presented anonymous hearsay complaints about threatening gestures and language used by the claimant at work that the claimant denied. The employer has not presented sufficient evidence on which to make finding that this conduct occurred. On the other hand, the claimant admits to sending the text messages. His defense is that he did not send the text messages at work. The text messages are intimidating and profane—the same type of conduct he was warned about before. Since they were directed toward employees and deal with work-related complaints he had about one worker waiving at him sarcastically and the other worker’s wife, this intimidating misconduct was related to his employment. Work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated September 16, 2011, reference 01, 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