

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J MASSEY
Claimant

APPEAL NO. 07A-UI-09107-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/19/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 18, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on October 9, 2007. The claimant participated. Participating as a witness for the claimant was Mr. Robert Terry. The employer participated by David Williams, Hearing Representative, and Witnesses Daren Casey, General Manager, and Kathy Manhart, Full-Time Kitchen Worker.

ISSUE:

The issue in this matter is whether the claimant quit his employment for good cause attributable to the employer or whether the claimant was discharged from employment under disqualifying conditions.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from May 15, 2006 until August 19, 2007 when he was discharged from employment. Mr. Massey held the position of part-time kitchen clerk and was paid by the hour. His immediate supervisor was Paul Owens.

The claimant was discharged when the employer believed that Mr. Massey had chosen to leave his employment. The claimant had been suspended from work for seven days as a disciplinary suspension and had agreed to return to work at the expiration of the suspension on August 23, 2007. On August 18, 2007, the claimant briefly spoke with Kathy Manhart, a deli clerk, outside the facility. At that time the claimant stated that he was going out of town for the weekend and that he would see Mr. Owens "when he returned." Ms. Manhart misinterpreted the claimant's statement believing that the claimant had said that he was going out of town and "would not return." Ms. Manhart reported her interpretation of the claimant's statement to company management. Later that week, Mr. Massey spoke with his supervisor and neither the claimant nor the supervisor made any mention of the claimant's intention to leave employment or of the

claimant's discharge. Subsequently the claimant was informed by the store's general manager that the claimant was no longer employed by the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged from employment when the employer mistakenly believed that the claimant had indicated a desire to leave his employment. Mr. Massey at the time was on a seven-day disciplinary suspension and had agreed to return to work on August 23, 2007. While off duty on suspension, the claimant briefly visited with a co-worker outside the Hy-Vee store stating in effect that he was going out of town and that he would see his supervisor upon his return. The hourly employee misinterpreted the claimant's remark believing the claimant had stated that he "would not return." Prior to the expiration of his disciplinary suspension the claimant was informed by the company that his employment had ended based upon the statements that he had made to Ms. Manhart.

In this case the claimant testified under oath that he did not indicate a desire to leave his employment. The claimant's testimony is corroborated by his subsequent conversations with his immediate supervisor during which the claimant nor the supervisor made any mention of the claimant leaving employment. The administrative law judge finds that the claimant's discharge took place based upon a misinterpretation of the claimant's statement by the employer. The claimant was discharged under nondisqualifying conditions.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged under nondisqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated September 18, 2007, reference 01, is hereby affirmed. Claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs