

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA E OLMSTEAD
Claimant

APPEAL NO: 10A-UI-10560-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/27/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's July 23, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. A telephone hearing was held on September 9, 2010. The claimant participated in the hearing. Tim Speir represented the employer. Candy Nickle, the assistant manager, Ginny Ward, the store manager, and Travis Messerly testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 26, 2010. He worked as a night clerk and was in training to become the night stock manager. Messerly and Ward supervised him.

The claimant worked as the acting night stock manager in June. In early June, Messerly remembers talking to the claimant about stocking product that came in on trucks at night. The claimant does not remember talking to Messerly in early June. The employer did not give the claimant a written warning for any problems or discussions Messerly may have had in early June with the claimant.

On June 28, Ward talked to the claimant about making sure he got all the pallets of product in the back stocked during his shift. At some point, Nickle reported that on June 30, the claimant told her he was done stocking around 8 p.m. She noticed that when he left at 10 p.m., there was still product on pallets in the back.

On July 1, when the claimant came to work, Ward talked to him as soon as he reported for work. Ward planned to give the claimant a written warning about his job performance for failing

to make sure product on pallets in the backroom was stocked during his shift. When the claimant reported to work on July 1 he was tired because his child was ill and he had gotten very little sleep. Before Ward gave the claimant a written warning, he told he her was burned out, tired and did not care. The employer concluded the claimant had already quit his job by this comment and ended his employment because of his "I don't care" attitude. The employer discharged the claimant not because of his job performance, but because the employer concluded the claimant no longer wanted the job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On July 1, instead of giving the claimant a written warning as the employer had intended to do, the employer discharged the claimant after he made the comment that he was burned out and did not care. For business reasons, the employer established justifiable reasons for discharging the claimant. Even though the claimant indicated he did not care and may not have even liked the job on July 1, this does not establish work-connected misconduct.

The employer did not take the time to find out why he left at 10 p.m. the night before without getting all of the product run or why he was tired and burned out. If the employer had taken time to do this instead of discharging him, the employer may have learned the claimant was tired after he had been unable to get much sleep because of a sick child. When the employer discharged him, the claimant's job performance may not have been satisfactory, but he was in training for this job. The employer did not establish that the claimant committed work-connected misconduct. Therefore, as of June 27, 2010, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representatives' July 23, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 27, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs