

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE W HERNANDEZ
Claimant

APPEAL NO. 12A-EUCU-00153-VST

HY-VEE INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/02/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated April 19, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Lee Hernandez.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a part-time cook in the Chinese Express Department of the Hy-Vee store located in Spencer, Iowa. He was hired in September of 2011. He was terminated on October 24, 2011. He was terminated for not following his boss' instructions on how to cook a particular dish.

When the claimant was hired, he was told to follow the recipes given to him by another employee named Marianne Hong, who was an assistant manager. Ms. Hong prepared beef and broccoli by adding MSG. Chris, the manager, did not use MSG, and told the claimant to stop. Ms. Hong again instructed the claimant to use MSG. The claimant attempted to resolve this issue by contacting his local human resources person. She never returned his calls. He then called corporate human resources and it was shortly after that call that he was terminated.

REASONING AND CONCLUSIONS OF LAW:

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The employer failed to respond to the hearing notice and provided no testimony or documentary evidence that might establish misconduct. The claimant's testimony does not show misconduct. He was caught between managers on how to cook a particular recipe and was attempting to resolve the matter when he was terminated. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 19, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs