IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMANDA L DRESSLER
Claimant

HY-VEE INC
Employer

APPEAL NO. 11A-UI-11275-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/24/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 19, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 22, 2011. The claimant participated personally. The employer participated by Mr. John Fiorelli, hearing representative, and witnesses Ms. Amy Jordahl, store director, and Mr. David Schwab, kitchen manager. Employer's Exhibits 1, 2, and 3 were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Amanda Dressler was employed by Hy-Vee, Inc. from August 23, 2005, until April 29, 2011, when she was discharged from employment. Mr. Dressler last held the position of part-time kitchen employee and was paid by the hour. Her immediate supervisor was David Schwab, kitchen manager.

Ms. Dressler was discharged when the kitchen manager believed that she was displaying an insubordinate attitude by questioning a management decision to change the way that salads were being prepared by the kitchen staff. Mr. Schwab had indicated that he was considering having the morning staff prepare salads and Ms. Dressler questioned the proposed decision, stating that the morning staff did not have sufficient employees for the change. Based upon a previous warning that had been served upon Ms. Dressler in the past, Mr. Schwab concluded that she continued to show an unsatisfactory work attitude and a decision was made to terminate Ms. Dressler from her employment. It appears that Mr. Schwab also believed that the claimant had, at times, made negative statements about the employer to other employees after she had received a warning in January of 2011.

It is the claimant's position she merely questioned the management decision that was being considered and that she did not refuse to follow work directives or refer to the idea as being "stupid" or any other derogatory way. Ms. Dressler signed the warning that had been given to her in January 2011 and agreed that her conduct was not acceptable. Ms. Dressler disagreed with her discharge, but was not aware that she could dispute her termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Ms. Dressler had previously been warned for displaying a bad work attitude and that the claimant had agreed with the warning and had attempted to make corrections in her attitude toward her work. Ms. Dressler had not received any additional warnings or counselings since January 2011, and the claimant specifically denied referring to a management change as "stupid" or in any other derogatory form. The claimant testified with specificity that she only asked, in effect, if the idea was a good one because of limited staff during morning hours.

In contrast, the employer's witnesses' testimony lacked specificity. The hearsay evidence that the claimant had made derogatory statements about the employer to other employees was countered by the claimant's firsthand, sworn testimony denying those allegations.

The question before the administrative law judge is not whether Hy-Vee has a right to discharge an employee for the above-stated reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Dressler may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant did not reasonably anticipate that asking a question about a proposed change would be considered to be insubordination and result in her termination from employment. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 19, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw