

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L KRAMER
Claimant

APPEAL NO. 09A-UI-03227-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/25/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 17, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2009. The claimant participated and testified on his own behalf. Participating on behalf of the employer was Daniel Spier, Hearing Representative and witnesses, Becky Cangelosi and Dave Bowling. Exhibits One through Six were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered all of the evidence in the record, finds: The claimant was employed by Hy-Vee Incorporated from May 1997 until January 6, 2009 when he was given the option of resigning or being discharged. Mr. Kramer was placed in the position of lead accounting coordinator and was employed on a full-time basis. His immediate supervisor was Becky Cangelosi.

The claimant was discharged when he was unable to meet the employer's expectations regarding job performance, adherence to accounting deadlines and the timeliness of accounting reports to the company's administrative offices. The claimant had been placed in the job position of accounting coordinator in July of 2006 with little or no training. Mr. Kramer attempted to the best of his abilities to perform his duties consistent with the employer's expectations but was unable to do so on a consistent basis due to lack of ability and insufficient training and the numerous expectations of the employer. The claimant had been counseled on a number of occasions that he could not stay in that position if his performance did not improve. Mr. Kramer was not aware that his job was in jeopardy prior to being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to establish the claimant was discharged for intentional misconduct sufficient to warrant a denial of unemployment insurance benefits. It is not.

The evidence establishes that Mr. Kramer was placed in the position of accounting coordinator with little or no experience and that the claimant attempted to perform his duties to the best of his abilities. Mr. Kramer was able to perform at times to the level of competence expected by the employer but was not able to do so on a consistent basis due to factors that were largely beyond his control. The claimant had little training and his abilities were not sufficient to work at the level of competence expected by the employer on a regular basis. Numerous job responsibilities had been placed upon the claimant and the claimant often was unable to meet all employer expectations due to factors beyond his control. The claimant was not sufficiently warned that he would be discharged from employment prior to the claimant being given the option to be discharged or to resign from employment.

The question is not whether the employer has a right to discharge the employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Act. While the decision to terminate Mr. Kramer may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that intentional disqualifying misconduct sufficient to warrant denial of unemployment insurance benefits has not been established.

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.

DECISION:

The representative's decision dated February 17, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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