

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC L WILSON**  
Claimant

**APPEAL NO. 07A-UI-07959-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/01/07 R: 04**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Eric Wilson filed an appeal from a representative's decision dated August 9, 2007, reference 02, which denied benefits based upon his separation from Hy-Vee Inc. After due notice was issued, a hearing was held by telephone on September 4, 2007. Mr. Wilson participated personally. Participating on his behalf was his attorney, Mr. Paul Silich. The employer participated by David Williams, hearing representative, and witnesses Doug Ambrose, Jackie Kunkuennen, and Nick Burke.

**ISSUE:**

At issue in this matter is whether Mr. Wilson was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the records, finds: The claimant worked for this employer from March 17, 2006, until July 5, 2007. Mr. Wilson worked as a part-time kitchen clerk and was paid by the hour. His immediate supervisor was Doug Ambrose.

Mr. Wilson was discharged after he was personally observed by Nick Burke on the night of July 2, 2007, removing a can of beer from ice tubs that were to be used by the attendees of an award ceremony sponsored by Hy-Vee for full-time and management personnel. The company's kitchen department had been retained as a caterer for the event and specific coolers of water and soda were available for support personnel providing catering services.

The claimant was observed leaving the outside cooking area and walking a substantial distance to guest coolers, where alcoholic beverages and soda were available for guests at the function. The claimant was observed by Mr. Burke reaching into the ice tub, removing a can, and then looking at it, before beginning to proceed back to the cooking area. When confronted, Mr. Wilson asked the claimant if that was a "beer" in his hand and responded the claimant "yes." Subsequently, the claimant indicated that he believed that he had taken a can of "Pepsi" and was unaware that it was beer. It was the claimant's position that he grabbed the wrong

beverage by “mistake” due to being tired from a long work shift and mentally distraught because of a funeral that he had recently attended. The claimant had been observed in the guest cooler area by Mr. Burke a few minutes before the claimant returned and removed the beverage in question.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the hearing record, that the employer has sustained its burden of proof in establishing that the claimant’s conduct was in willful disregard of the employer’s interests and standards of behavior and thus disqualifying under the provisions of the Iowa Employment Security Act. The evidence in the record establishes that a set procedure utilized in catering events is to provide water and soda for working employees and to provide the receptacles for these beverages in an area at or near the cooking location. Employees are aware that they are free to take water or soda that is provided for their use by the Hy-Vee catering department but that they are not allowed to take or consume beverages that are being sold to and are the property of the person or company that has booked the event.

On the night in question, the evidence establishes that Mr. Wilson was observed in the guest beverage area looking at coolers and their contents before returning some minutes later to pull “Bud Light” from one of the coolers and beginning to return to his work area. Mr. Burke testified that he observed the claimant look at the beverage that he pulled from the ice and that both Mr. Burke and the claimant could identify the claimant as being beer instead of pop. When the claimant did not return the beverage to the ice tub area but instead proceeded back to his work area, he was confronted by Mr. Burke and immediately confirmed that the can he held contained “beer.”

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 employer has sustained its burden of proof in showing that the claimant intentionally violated company policy by removing the property of clients of the Hy-Vee catering department and/or by attempting to secure and consume an alcoholic beverage while duty with the company. Benefits are withheld.

**DECISION:**

The representative's decision dated August 9, 2007, reference 02, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid for insured work equal to ten times the claimant's weekly job insurance benefit amount, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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