

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RHONDA L JENSEN**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 14A-UI-11008-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/28/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated October 16, 2014 (reference 01) which held that Rhonda Jensen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2014. The claimant participated in the hearing with former employee Jerilyn James. The employer participated through Store Director Tim Hauptert; Human Resources Manager Taylor Ward; and Employer Representative Judy Berry. Employer's Exhibits One and Two were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as part-time kitchen help on August 11, 2011 and became a regular-time employee with benefits and 30 hours guaranteed per week in February 2014. The employer's Code of Conduct policies requires merchandise or food to be purchased before consuming it. However, the employer's practice was not as strict and employees often paid after the fact as long as arrangements were made. The kitchen employees often paid for their meals at a later time or at the end of their shifts. The store is located in a small town and there is an element of trust with the employees working there.

The claimant was discharged for consuming her noon meal on September 26, 2014 without first paying for it. She was told to go meet the store director when she was done with her work. The claimant was scheduled to get off work at 1:00 p.m. but did not get done working until after 4:30 p.m. Before clocking out, she went upstairs to talk to the store director and was asked whether she had consumed a meal without paying for it first and she admitted she had. The claimant was then discharged. She testified that she was going to pay for it before she clocked out.

The claimant filed a claim for unemployment insurance benefits effective September 28, 2014 and has received benefits after the separation from employment in the amount of \$1904. Store Director Tim Haupt and Human Resources Manager Taylor Ward participated in the fact-finding interview on behalf of the employer.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on September 26, 2014, for eating her lunch without paying for it first. Although the store policy requires employees to pay for their meals before consuming them, the kitchen practice routinely allows employees to make arrangements to pay later and/or to pay at the end of their shift.

Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The evidence establishes that the claimant violated the rule but it does not establish that she was not going to pay for her food. She testified she was going to pay for the meal before she clocked out and there is no evidence to dispute that. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

#### **DECISION:**

The unemployment insurance decision dated October 16, 2014 (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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