

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANGELA D HAMEISTER
2803 SPORTSMANS DR
MILFORD IA 51351-9600

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

JOHN SANDY
ATTORNEY AT LAW
304 18TH ST
PO BOX 445
SPIRIT LAKE IA 51360

Appeal Number: 06A-UI-03414-S2T
OC: 03/05/06 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's March 20, 2006 decision (reference 01) that concluded Angela Hameister (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2006. The claimant was represented by John Sandy, Attorney at Law, and participated personally. The employer was represented by David Williams, Manager of Operations, participated by Bonnie Bell, Director of Loss Prevention, and Tim Bruzek, Store Director. Sarah Lloyd observed the hearing.

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 on April 27, 1992, as a full-time customer service manager. The claimant received no warnings during her employment. The employer could not remember if the claimant had been trained on the proper procedure for redemption of coupons. The claimant did not remember being trained on coupon redemption procedures.

On or about March 2, 2006, the employer discovered the claimant had presented items to a new employee for checkout during her break time. The claimant provided coupons for the items. The new employee rang up the items and the claimant used her manager's key for use of the coupons. The claimant had a savings of over \$124.00 because of her coupons.

Later, the employer examined the coupons and the information from the register. The claimant used twelve coupons on eight containers of infant formula. She also used an expired Fareway advertisement to obtain a lower price on water. The claimant thought she could use as many coupons on an item as she wished. With regard to the water, she had requested the water before the Fareway advertisement expired. The claimant was unaware she had done anything wrong until the employer questioned the claimant about the incident. The employer terminated the claimant on March 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 20, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/kkf