

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYN ORWIG
Claimant

APPEAL NO. 14O-UI-02173-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/10/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer/appellant) appealed an unemployment insurance decision dated December 3, 2013, (reference 01), which held that Lyn Orwig (claimant/respondent) was eligible for unemployment insurance benefits. This was scheduled for a hearing before Administrative Law Judge Bonny Hendricksmeier on December 31, 2013. However, the appellant did not participate so no hearing was held and a record decision was issued upholding the original decision in appeal 13A-UI-13426-HT. The employer appealed the decision to the Employment Appeal Board indicating they did not participate due to lack of notice. On February 25, 2014, the Board remanded for a new hearing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2014. The claimant participated in the hearing. The employer participated through Store Director Tim Mansfield and Hearing Representative Ajah Anderson. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

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 most recently worked as a part-time floral clerk and was employed from October 25, 2012, through November 9, 2013, when she was discharged for theft of time. On November 7, 2013, the claimant got off her shift at 6:00 p.m. and did some shopping while still on the clock. She punched out on the time clock at 6:14 p.m. The claimant said she was not shopping but grabbed a gallon of milk while heading towards the time clock. The claimant's purchase receipt at 6:19 p.m. showed she had a couple gallons of milk, a couple candy bars and a couple boxes of granola bars.

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 November 9, 2013 for theft of time. One of the most fundamental duties owed to an employer is honesty. An employer can reasonably expect that an employee will work the hours reported on a time card and that time cards will not be falsified.

The evidence does confirm the claimant did not immediately clock out after her shift on November 7, 2013, but grabbed a few grocery items before doing so. However, it was an isolated incident without a pattern of deliberate falsification. The claimant's actions more accurately reflect a lapse of judgment than an intentional theft of time. 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 December 3, 2013, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css