

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ENVER KREHO
Claimant

APPEAL NO: 08A-UI-05290-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/04/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Enver Kreho (employer) appealed a representative's May 29, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was convened on June 17, 2008. The hearing was reconvened and continued on June 26, 2008, and was finally reconvened and concluded on June 30, 2008. The claimant participated in the hearing. This appeal was consolidated for hearing with a related appeal, 08A-UI-05289-DT involving another claimant, Kerim Kreho, who also participated in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from five witnesses, Kevin Garrison, Steve Wadstrom, Les Bruner, Tally Rousselow, and Ryan Roberts. Zijo Suceška served as interpreter. During the hearing, Employer's Exhibits One through Four and Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 31, 1998. He worked full time as a night stocker at the employer's Des Moines, Iowa area store. His last day of work was the shift that ended on the morning of May 6, 2008. The employer discharged him at the end of that shift. The stated reason for the discharge was theft and consumption of the employer's product without paying for it.

On the morning of May 4 at approximately 2:00 a.m., the inventory manager, Kevin Garrison, while passing through a store aisle, saw Enver Kreho eating some snack food from a bag. Mr. Garrison later verified that the bag of snack food had not been paid for. Enver Kreho and Kerim Kreho are father and son, respectively. On the morning of May 6 at approximately 3:30 a.m., the bakery manager, Steve Wadstrom, encountered the two of them consuming

some food product, a bottle of mineral water (Kerim Kreho) and a can of soup (Enver Kreho). The items were later retrieved from a back store area where they kept their coats. Enver Kreho had not purchased the soup before consuming it. While in the hearing the claimant denied consuming either the snack food or the soup, the administrative law judge finds the testimony of the employer's witnesses to be more credible.

There was some evidence introduced by the claimant to suggest that the employer's witnesses should not be found to be credible because of an asserted grudge against the claimant due to an incident two years prior where the employer initially discharged the claimant because of a belief that the claimant had been involved in the removal of a DVD player from the store; it was later discovered that the item had not in fact been physically removed from the store, and the claimant was reinstated. The administrative law judge concludes that there has been no persuasive evidence showing that the prior incident affected the employer's witnesses' observations in this case.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant did take and consume the employer's product without paying for it. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 29, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 6, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs