

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

VICKI L GLAUBIUS
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305 S VINE ST
GLENWOOD IA 51534

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

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

Appeal Number: 05A-UI-05148-BT
OC: 04/17/05 R: 01
Claimant: Appellant (2)

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:

Vickie Glaubius (claimant) appealed an unemployment insurance decision dated May 9, 2005, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Hy-Vee, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2005. The claimant participated in the hearing. The employer participated through Brian Moon, Store Director; Jeff Wilson, Dairy Manager; Kevin Lindsey, Manager of General Merchandise; Josh Benson, Cook; and David Williams of TALX UC Express.

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 employed as a part-time kitchen clerk from June 9, 2004 through April 22, 2004. She was discharged for time theft. On April 16, 2005, the claimant got off work late and was upset that she had not been able to get her work done as she was assigned to do her supervisor's work. She stopped working at 1:30 p.m. and started shopping. The claimant had to go to the restroom and as she was walking back to that area, she saw the time clock and remembered she had not clocked out so she clocked out at approximately 1:43 p.m. A manager saw the claimant with a cart of groceries and then saw her punch out. He asked her if she got paid to shop and the claimant started to explain that she had to go to the bathroom, but was not able to fully explain the situation. She had never received any written or verbal disciplinary warnings.

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 the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for time theft of approximately 13 minutes on April 16, 2005. She contends she forgot to clock out and did so after remembering. The claimant's testimony is reliable and there is no reason to doubt that it was a simple mistake. It hardly seems likely that an employee without any disciplinary history would jeopardize her employment by stealing 13 minutes from the employer. 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 May 9, 2005, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/pjs