

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORAH DAVIS
Claimant

HY-VEE INC
Employer

APPEAL 22A-UI-02146-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer, Hy-Vee Inc., filed an appeal from the December 20, 2021, (reference 01) unemployment insurance decision that denied benefits effective November 29, 2021, based upon the conclusion she was discharged for theft of company property. The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2022. The claimant participated and testified. The employer participated through Assistant Manager Lindsay DeLong. Exhibits A, 1 and 2 were received into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Deborah Davis, worked for the employer as a part-time customer service representative from April 19, 2017, until she was separated from employment, when she was discharged. The claimant reported directly to Store Manager Brad Albers.

The employer has an employee handbook. The employee handbook has a provision says that theft of funds can lead to termination of employment. The employer provided a copy of this policy. The claimant acknowledged receipt of the employee handbook on April 19, 2017. (Exhibit 2)

On November 27, 2021, the claimant took a gift card that was intended for a customer home with her. The gift card had \$20.00 on it. There was a note on the gift card stating it was being held for a customer. The claimant took the gift card with the intent to use it for her own reasons. The gift card was deactivated by the employer before the claimant had a chance to use it.

On November 29, 2021, Assistant Manager Lindsay DeLong viewed security camera footage showing the claimant taking the gift card and placing it in her pocket. After viewing the camera footage, Ms. DeLong invited the claimant to her office for an investigative interview with Store

Manager Brad Albers and Human Resources Representative Tim McCracken also attending. Ms. DeLong asked the claimant about the location of the gift card. Initially, the claimant said she believed the gift card was in two different locations at the customer service desk. The claimant gave these false answers because she was afraid, she would be terminated if she answered honestly. After Ms. DeLong informed the claimant admitted she took the card, but she said she took it home to shred it. The claimant did not explain why she believed she needed to take it home to shred it. After making this admission, the employer terminated the claimant. She was not given the option to resign.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

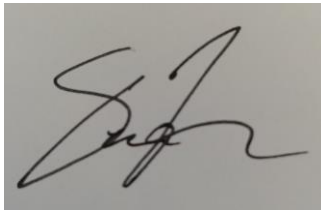
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The claimant contends she did not engage in theft because the card was disqualified before she was able to use the gift card at issue. The administrative law judge is not convinced by this argument because the claimant acknowledges she took the gift card with the intent to use it for her own personal benefit.

The claimant's intention and actions on that day constitute theft from the employer. Theft from an employer is generally disqualifying misconduct. That the employer managed to obstruct her use of the card does not transform the claimant's discharge into one that is non-disqualifying. Her actions on that day reasonably undermined its trust in her as a steward of its property and revenues. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The December 20, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 22, 2022
Decision Dated and Mailed

smn/mh