

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEITH R OLSON**  
Claimant

**APPEAL NO: 12A-UI-04425-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/11/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated April 10, 2012, reference 01, that held the claimant was not discharged for misconduct on March 12, 2012, and which allowed benefits. A telephone hearing was held on May 10, 2012. The claimant participated. Julia Day, representative; Tim Michael, store director; Herb Hoover, bakery manager; and Rose Kline, operations manager, participated for the employer. Employer Exhibits 1 through 6 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on July 11, 2011, and last worked for the employer as a part-time kitchen clerk on March 12, 2012. He received the employer's policies, which includes a statement customer service is our entire business. Failure to give good customer service is grounds for termination.

A customer complained to the store director on March 8 that claimant failed to wait on him at the kitchen counter on March 5. Another store employee observed claimant made eye contact with the customer but after two or so minutes, he left without service.

When confronted by the store director, claimant recalled the customer but denies he failed to wait him for a lengthy period. Claimant was discharged for failing to give good customer service.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 12, 2012.

While the employer has the right to establish a strict customer service policy and terminate an employee for violation, it must be for job-disqualifying misconduct to deny benefits. A single, isolated incident absent evidence of mal intent is not sufficient to deny benefits. There were no prior warnings for the same conduct or any other conduct.

**DECISION:**

The department decision dated April 10, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on March 12, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/kjw