

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLETHA J BUNCH
Claimant

APPEAL NO. 11A-UI-15429-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/23/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marletha J. Bunch filed a timely appeal from an unemployment insurance decision dated November 29, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held January 24, 2012 with Ms. Bunch participating. Michael Stanek was on the line for the claimant but was not called to testify. The employer, Hy-Vee, Inc. provided the name and telephone numbers of a representative and witnesses. When the representative was called, he gave the name and phone number of a different person who was to serve as representative. A call to that person was answered by a recording. The administrative law judge then called the employer's witnesses. The administrative law judge was placed on hold, and the call was later disconnected, not by the administrative law judge. Claimant Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Marletha J. Bunch was employed by Hy-Vee, Inc. from July 18, 2008 until she was discharged October 24, 2011. Meat department manager, Steve Mick said that it had been alleged that Ms. Bunch had given a discount to a coworker. She had not done so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, no one appeared in the hearing on behalf of the employer, and no one testified on behalf of the employer. The claimant testified under oath that she had not given a discount to a coworker. Her testimony is the best evidence in this record. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated November 29, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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