

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE R GREENLEE
Claimant

APPEAL NO: 15A-UI-04278-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/08/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sherrie R. Greenlee (claimant) appealed a representative's April 3, 2015 (reference 01) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2015. The claimant participated in the hearing and was represented by Ryan Beattie, Attorney at Law. Sabrina Bentler, Corporate Cost Control representative, appeared on the employer's behalf and presented testimony from three witnesses; Beverly Rigg, Nate Fehl, and Ron Fridley. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on February 3, 2001. Since about late 2013, the claimant has worked full time as a convenience store clerk at the employer's Indianola, Iowa store. Her last day of work was March 6, 2015. The employer discharged her on March 7, 2015. The reason asserted for the discharge was negligence.

The claimant usually worked the 3:00 p.m. to 11:00 p.m. and was the lead worker on that shift. On the night of March 6, she was working with one other clerk who she had been training for several weeks. There were three drawers open, the claimant's drawer (drawer #2), the other clerk's drawer (drawer #3), and the drawer that was nearest the window with an automatic change dispenser (drawer #1). Drawer #1 was not being actively used by either employee but needed to be on during the entire shift; it contained only seven dollars throughout the shift, in addition to the coin change in the dispenser.

At closing time the claimant and the other clerk each counted and closed their drawers, putting the money into individual money bags. The other clerk took the seven dollars (a five and two ones) from Drawer #1 and put it into a money bag but unseen by the claimant set the bag back down on the counter while he got his own drawer's money bag. The claimant thought that the other clerk had both the bag from his drawer and Drawer #1. The two employees then dropped the money bags into the safe, and then exited the store. The money bag with the \$7 from Drawer #1 sat on the counter overnight. The fuel center manager, Fridley, became aware that it had been left out on the morning of March 7.

The employer has an informal verbal policy to the effect that leaving a money bag out can result in discharge. While this was the claimant's only violation of this or any other policy, as a result of this incident the employer discharged the claimant.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her responsibility for the money bag being left out. Under the circumstances of this case, the claimant's failure to ensure the bag was deposited into the safe was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 3, 2015 (reference 01) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can