

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHICO E OAKLEY
Claimant

APPEAL NO. 11A-UI-14692-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/10/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Chico Oakley, filed an appeal from a decision dated November 3, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held in Des Moines, Iowa, on December 13, 2011. The claimant participated on his own behalf and was represented by Joseph Fernandez. Rachelle Oakley was present but did not participate. The employer, Hy-Vee, participated by Store Director Josh Asche and was represented by Corporate Cost Control in the person of Paul Janke. Exhibits One, Two and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Chico Oakley was employed by Hy-Vee from November 15, 2004 until October 14, 2011 as a full-time manager of store operations. In November 2010 and October 2011, Mr. Oakley had attended meetings with the store director at which the code of ethics was read aloud and he signed acknowledgements he had been advised of those policies. In September 2006 he received a copy of the employer's company policies.

The code of ethics forbids an employee from accepting personal gifts in excess of \$25.00 without approval. No gifts at all are to be accepted from a supplier or potential supplier if it might be inferred that the purpose is to improperly influence the employee's judgment. It also prohibited accepting frequent or continued gifts from the same individual or company.

A wholly-owned subsidiary company of Hy Vee is Midwest Bank, which is housed within the store itself. The employees of the bank are not employees of Hy Vee. The bank has a policy that if an account holder refers a friend to the bank and that friend opens an account; both the current account holder and the new account holder will receive a \$25.00 gift card for Hy-Vee.

On October 13, 2011, an employee, Andrew Blize, went to his supervisor, Manager of Perishables Allie Durnker, to report he had assisted Mr. Oakley in a new employee orientation. Mr. Oakley had told Mr. Blize he would "split" the gift cards from the bank with him as nine new hires had opened accounts at Midwest Bank after the orientation in which they both assisted. The claimant apparently included in his store tour for new hires a visit to the bank with the information that if the new employees opened an account they would receive a \$25.00 gift card. Nine gift cards were given to Mr. Oakley which he said he would share with Mr. Blize.

Ms. Durnker reported the matter to Store Director Josh Asche and he discussed the matter with Regional Assistant Vice President of Operations Laura Fulton. He also checked with the prior store director, Bret Bremizer, to find out if he had given authorization to the claimant to receive these gift cards and he had not. Mr. Asche consulted the manager of the Midwest Bank at the same store location and was informed Mr. Oakley had received a total of 45 gift cards since January 2009, for a total amount of \$1,125.00. Mr. Asche consulted with Assistant Vice President for Legal Counsel Mic Jurgens. It was determined the claimant had violated the code of ethics by accepting these gift cards when he referred the new hires to Midwest Bank and accepted many gift cards as a result.

Mr. Oakley was questioned on October 14, 2011, about the matter and he admitted he had received the gift cards for referring people who opened accounts at Midwest Bank. He did not feel he had done anything wrong even though he was not an account holder. He maintained he had received approval from the bank branch manager, who had received permission from his supervisor, to allow the gift card to Hy Vee employees who made referrals, even if that person did not have an account at the bank.

He acknowledged he had never sought, nor been given, authorization from any store director to continue receiving the gift cards when new hires opened accounts at Midwest Bank.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant freely admitted he had taken the gift cards for referring new hires to Midwest Bank over the course of two years. While it may be true he did not specifically recommend the new hires to open an account, his position of manager of store operations would seem to lend undue influence to any mention of opening up an account at a fully-owned subsidiary business.

An occasional referral might not have created much of a problem but it is apparent Mr. Oakley claimed a substantial number of these gift cards. The code of ethics states no gifts should be received more than \$25.00 and Mr. Oakley argues that each individual card was not more than that amount. But surely it is evident that 45 gift cards, accepted as a result of directing new hires to the bank, are collectively more than that amount by a substantial sum.

The code of ethics also prohibits "continued or frequent" gifts from the same company, which the claimant violated. In addition, the bank is a "supplier," in a sense, to Hy Vee even if it is a subsidiary, as it supplies banking services to Hy Vee customers by virtue of being in the same building. Gifts from suppliers are not to be accepted if it "might be inferred that the purpose was to improperly influence the employee's judgment." The administrative law judge must question whether the claimant would have referred 45 private acquaintances to the bank or that many employees to another bank, if it had not been possible for him to receive the gift cards.

As the manager of store operations the claimant should be held to a higher standard of conduct, including avoiding the appearance of impropriety. It is evident Mr. Oakley understood full well that what he was doing was certainly of a very questionable nature and declined to discuss the situation with any store director to obtain authorization because he feared he would be told to stop accepting the gift cards. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of November 3, 2011, reference 01, is affirmed. Chico Oakley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs