

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**RONALD WAYBILL**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-05822-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On June 6, 2020, the claimant filed an appeal from the June 1, 2020, (reference 01) unemployment insurance decision that denied benefits based on violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2020. Claimant participated. Employer participated through Julie Axtell, Human Resource Manager, Kyle Greenleaf, Store Manager and Kay Cress, Store Director. The employer was represented by Erin Bewley. Exhibits A and B were admitted into the record.

**ISSUE:**

Did the claimant commit job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 23, 2002. Claimant last worked as a full-time night stocker. Claimant was separated from employment on April 22, 2020 when he was discharged for taking company merchandise without paying for it.

The employer received a report that claimant had taken two packages of toilet paper out of the store without paying for it on March 14, 2020. The employer conducted an investigation. The employer reviewed computer records of purchases and video of the claimant. The computer records did not show claimant had paid for the merchandise. The video record showed that on March 14, 2020 claimant went through the check-out line where there were no check-out personnel, with toilet paper in a shopping cart. This was not a self-service check-out line. There were no other items in the cart. Ms. Cress talked to claimant on April 22, 2020 and claimant told her that he was going to get around to paying for the merchandise. Claimant was terminated on April 22, 2020.

Claimant testified that the toilet paper was damaged merchandise and he had asked a supervisor to scan the product and get a discount. Claimant said the supervisor did not return and claimant went through a self-service check-out line, purchased other items and forgot to ring up the toilet

paper. Claimant said he realized this mistake when her got to his car and that he planned to pay the next day. Claimant said he simply forgot after that and did not pay for the product. Claimant received and was aware of his employer's policy that prohibited taking product without paying for it.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and

knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

I find that the employer has proven claimant committed job-related misconduct. The pictures from the store on March 14, 2020 show claimant in a check-out line with no cashier and no other product in his cart. There is a picture of claimant checking groceries on March 13, 2020, but the toilet paper was not visible. (Ex. B) The claimant violated a known company policy.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The June 1, 2020 (reference 01) unemployment insurance decision denying benefits is affirmed. The claimant is ineligible for unemployment until he works 10-times his weekly benefit amount.

### **Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act**

Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

#### **NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-informatio>



---

James F. Elliott  
Administrative Law Judge

July 16, 2020  
Decision Dated and Mailed

je/sam