

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD B JESTAL
Claimant

APPEAL NO. 10A-UI-03250-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 01/24/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 17, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 7, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Tim Speir participated in the hearing on behalf of the employer with witnesses, Kim Shafer, Suzi Sundholm, and Thomas Ramirez. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a kitchen clerk for the employer from June 14, 2008, to January 21, 2010. He was informed and understood that under the employer's work rules, he was required pay for any food before consuming it.

On January 21, the claimant cooked two sausages on the grill, wrapped them in a napkin, and went into cooler. A coworker, Thomas Ramirez, witnessed the claimant doing this and that he did not have the sausages when he left the cooler. The claimant never paid for the sausages and intended to eat them.

Ramirez reported what had happened to a manager. At the end of the day, the human resources manager discharged the claimant for violating the employer policy about paying for food before consuming it. The claimant admitted to taking the food with the intention of eating it but said he ended up throwing it away.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. Ramirez's testimony was very believable on the point that he saw the claimant cook the sausages and take them without paying for them. The claimant's testimony that the sausages were left over and ready to be discarded is not credible. I think it is quite possible that the claimant had not had breakfast and was concerned about his diabetes and did not think it was a big deal to take two link sausages to tide him over. Unfortunately, this was a willful violation of the employer's policy and not a good-faith error in judgment. Work-connected misconduct has been shown in this case.

DECISION:

The unemployment insurance decision dated February 17, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw