

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY S LILLEY
Claimant

APPEAL NO. 110-UI-12112-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/22/11
Claimant: Respondent (4)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 22, 2011, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. This case is being reheard after the employment appeal board remanded the case for a new hearing. A telephone hearing was held on November 3, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Paula Mack participated in the hearing on behalf of the employer with a witness, Les Bruner.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a delivery driver and clerk from February 4, 2010, to September 18, 2010. On his application for employment, the claimant stated that he did not have any criminal convictions, beyond traffic tickets.

In September 2010, an employee reported to the human resources manager that the claimant had an extensive criminal history. When the manager checked his criminal history, he discovered the claimant had seven criminal convictions from 1995 through 2006, which included possession of illegal drugs, theft, harassment, criminal mischief, and assault.

When the claimant was questioned about his criminal history, he admitted to the convictions. He said he had not reported them on his employment application because he had put the matters behind him and was moving on with his life.

The employer discharged the claimant on September 21, 2010, for misrepresenting information on his employment application. If the claimant had truthfully answered the questions, the employer would not have hired him.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 22, 2011. His weekly benefit amount was determined to be \$132.00. When the claimant

filed for unemployment benefits, he had earned \$2,280.00 in wages since his separation from employment in September 2010.

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 until they have earned at least ten times their weekly benefit amount in subsequent employment if they have been 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 claimant's misrepresentation on his employment application was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

As of May 22, 2011, the claimant had requalified for unemployment benefits based on his separation from Hy-Vee. The employer's account will be exempt from charge for benefits paid to the claimant. The claimant remains disqualified based on his separation from Hospitality Staffing Inc.

DECISION:

The unemployment insurance decision dated June 22, 2011, reference 03, is modified in favor of the employer. The claimant was discharged for work-connected misconduct from the employer but has requalified since then. He remains disqualified based on his separation from Hospitality Staffing Inc. The employer's account will not be charged for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css