

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEIGH A LYNN
Claimant

APPEAL NO. 12A-UI-11790-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/26/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Leigh Lynn, filed an appeal from a decision dated September 24, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Dubuque, Iowa, on October 22, 2012. The claimant participated on her own behalf, John Rosenthal acted as representative, and Bob Lynn observed the proceedings but did not participate. The employer, Hy-Vee, participated by Store Director Abbie Olson, Manager of Store Operations Josh Buzzell, Floral Manager Penny Salow, Manager of Perishables Elise Feltes, Floral Supervisor Kim Hanson, and Human Resources Generalist Marla Gentry.

ISSUE:

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

FINDINGS OF FACT:

Leigh Lynn was employed by Hy-Vee from September 29, 2009, until August 29, 2012, as a full-time floral designer. The current floral manager, Penny Salow, was hired on July 1, 2012. Store Director Abbie Olson met with the floral department employees on August 1 to discuss various issues, including an ongoing conflict within the department between employees. Ms. Olson was very definite that things would have to get better, because she did not intend to lose a third floral manager in two years.

The conditions did not improve after the meeting on August 1. Ms. Lynn was the focus of much negativity, lack of productivity, badmouthing other employees, criticizing the design skills and work of another employee, Helen Heacock, and spending much time complaining about the schedules. The schedule issue had become so egregious that Ms. Olson had finally declared the schedule would not be posted in the floral area but upstairs, where it could only be discussed on break or meal time. The schedule issue had further deteriorated to the point where instead of the floral manager making the schedule, her supervisor, Manager of Perishables Elise Feltes, had to do it.

The situation became worse and worse with the claimant taking out her problems and bad temper by going around the floral department “like a tornado” trying to locate something she had lost, rearranging the floor displays made by other employees, continuing to criticize Ms. Heacock’s work, and failing to fill up the coolers with flower arrangements after she had worked evenings or afternoons.

The matter came to a head on August 27, 2012, when Ms. Salow came to Ms. Olson and said that she was giving her two-week notice. Ms. Salow acknowledged she had been offered another job, but that the reason she was wanting to take that other job was the continuing negativity and egregious conduct of Ms. Lynn creating problems in the floral department.

Ms. Olson investigated and Ms. Feltes stated she had received many complaints from the floral department and all of them were about Ms. Lynn. Ms. Olson discussed the matter further with Assistant Vice President of Operations Mary Fuhrman, and it was agreed that the claimant needed to be discharged because simply transferring her to another department would not help the problem. The claimant was discharged in order to keep Ms. Salow as the floral manager and to improve the work conditions and productivity in the floral department.

The employer has acknowledged that since Ms. Lynn’s separation, the productivity in the floral department has improved dramatically, there have been no complaints by employees against other employees, and many outright said it was certainly long past due that the “bad apple” was removed from the department.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 had been told, along with other members of the floral department, they needed to start getting along and stop with the badmouthing and backbiting. Ms. Lynn was not prepared to comply with that requirement and continued her negativity to the point where the floral manager was willing to quit less than two months into the job.

The employer has the right to expect employees to conduct themselves as professional adults while on the job and maintain an overall atmosphere of helpfulness and courtesy with coworkers. Ms. Lynn was not prepared to modify her conduct to maintain those goals. For a floral manager to be willing to quit in less than two months because of one person's conduct is evidence of misconduct. This was not an isolated incident but an ongoing course of conduct detrimental to the employer's business. This is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of September 24, 2012, reference 01, is affirmed. Leigh Lynn is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw