

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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HY-VEE INC  
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PO BOX 283  
ST LOUIS MO 63166-0283

HY-VEE  
c/o TALX UC EXPRESS  
4100 HUBBELL #78  
DES MOINES IA 50317 4546

Appeal Number: 04A-UI-08832-H2T  
OC 07-18-04 R 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 9, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 9, 2004. The claimant did participate. The employer did participate through Chuck Donnelly, Store Director; Dan Simon, Manager of Store Operations; Katie Staudt, Employment Coordinator; Phil Schmit, Meat Department Clerk; and was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a checker regular full time beginning March 12, 1987 through July 19, 2004 when she was discharged.

On July 16, 2004 the claimant took a ham steak back to the meat department and over rode the scale to change the price on the ticket from \$7.41 to \$2.45. Phil Schmitt, a clerk in the meat department, observed the claimant using the scale and the claimant does not deny using the scale. After the claimant was done using the scale Mr. Schmitt checked the machine and printed out a receipt for the last transaction performed by the claimant. That receipt confirmed that the claimant had overridden the four-digit code price for ham steak and changed it from \$3.00 per pound to \$.99 per pound. A ham steak that weighed 2.47 pounds would cost \$7.41 if the price per pound were \$3.00. A ham steak that weighed 2.47 pounds would cost \$2.45 if the price per pound were \$.99. The claimant printed out a new price tag for the ham steak that provided the cost of the steak was \$2.45. As a former long-term employee of the meat department the claimant knew how to override the four-digit price code for meat products. Mr. Donnelly credibly testified that the ham steak products sold in the store, whether thick cut or thin cut, always weighed in the area of 2 pounds to 2½ pounds, never under 1 pound each. The ham steaks come prepackaged from the vendor and never weigh less than 1 pound. The claimant paid for her purchases with a credit card, which was traced by Mr. Donnelly after the transaction was completed. The cash register receipt showed the claimant purchased a meat item that cost \$2.45. At hearing the claimant admitted on July 16, 2004 she purchased a ham steak from the store that cost \$2.45.

When the claimant next worked on Monday, she was question by Mr. Donnelly and by Mr. Simon about the ham steak purchase on July 16, 2004. At that interview the claimant admitted that she had used the scale and had overridden the four-digit price code but said she must have inadvertently entered \$.99 instead of \$2.99. The price of the ham steak was never \$2.99; it was \$3.00, as the claimant admitted at hearing. The claimant never indicated that she had not purchased the same ham steak she had weighed and re-tagged.

In April 2004 the assistant meat department manager had previously warned the claimant verbally that she was not to create her own labels for products she was purchasing. According to the employer's policy no employee is to ever handle their own transactions; they are to have a coworker perform the transaction instead. At the time the claimant created the new label, approximately 4:45 p.m., two other employees were working in the meat department who could have reprinted a label if she believed it to be illegible. Even if the label were illegible, the claimant merely had to enter the four-digit code for ham steak and the proper price would have been printed on the label. By overriding the four-digit code price (the claimant admits she entered the proper code for ham steak) the claimant was acting intentionally to change the price.

The employer's policy, which was given to the claimant on September 15, 2003, provides that unauthorized removal of company property or theft is grounds for immediate termination.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant intentionally changed the price on a ham steak from \$7.41 to \$2.45 in order to purchase the meat for a cheaper price. The claimant's argument that she entered the wrong price code is not persuasive, as the claimant had no reason to enter the price for the product at all. The claimant admitted that she entered the proper four-digit price code for ham steak. By doing so the price would have automatically printed up on the receipt correctly, it is only by overriding the price code that the price is changed. The claimant's statement on the Monday following the incident that she must have inadvertently entered \$.99 instead of \$2.99 is not persuasive either as the price was \$3.00 per pound.

At hearing the claimant alleged that she had taken the ham steak that was priced at \$7.41 and weighed 2.47 pounds and put it back on the shelf and took a ham steak that cost exactly \$2.45 and purchased it. This too is not persuasive for a number of reasons. First, the claimant never mentioned this event to either Mr. Donnelly or Mr. Simon at her interview on Monday, July 19, 2004. At that time the only excuse she could provide was that she had incorrectly entered the price of the product. Secondly, Mr. Donnelly credibly testified that none of the ham steaks sold, whether thick or thin cut, weighed less than 1 pound. Since ham steaks cost \$3.00 per pound

and the one the claimant purchased was rung up at \$2.45, if correctly priced it would have weighed less than 1 pound, a situation Mr. Donnelly established does not exist. The claimant's grocery receipt that was traced back to her credit card for a purchase made at 4:48 p.m. on July 16, 2004 shows a meat purchase of \$2.45. It is just too coincidental that the claimant would purchase a ham steak that cost \$2.45, which is exactly what the ham steak she weighed in the meat department would have cost if priced incorrectly at \$.99 per pound. The administrative law judge is persuaded that the claimant did override the price on the scale when she weighed the ham steak and changed the price from \$7.41 to \$2.45. Such an action is theft and is substantial misconduct sufficient to disqualify the claimant from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The August 9, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/b