

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LITTLE W TUCKER
Claimant

APPEAL NO: 10A-UI-14430-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/12/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 13, 2010 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Tim Speir, a representative with Unemployment Insurance Services, represented the employer. Chad Mast, the assistant director of store operations, and Nancy Borkowski, a customer service representative, testified on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working part time for the employer in March 2009. He worked in the kitchen. On May 4, 2009, the claimant signed off on the employer's policy that informed all employees that pop, juice, milk, coffee or any drink product was not free. Employees were required to pay for these drinks. (Employer Exhibit One.) The claimant understood this policy.

On July 13, 2009, the claimant went to the store around 10 a.m. to talk to the store director about a job in another department. The claimant went to the store during a time he was not scheduled to work. Borkowski saw the claimant in the break room. She noticed the claimant pick up a water glass, go to the soda fountain machine and pour himself some pop. It was hot and the claimant was thirsty. The claimant drank this pop and then filled the water glass with water. The claimant did not pay for the pop he drank. If the claimant had taken a cup that is used for pop, he would have paid \$1.29 for the pop. The claimant drank about a quarter of what is usually sold in a pop container.

When the claimant returned to the store for his 3 p.m. shift, Mast talked to him. After the claimant left that morning, Borkowski reported that the claimant had some pop he did not pay

for. When Mast talked to the claimant later that afternoon, the claimant did not recall drinking any pop earlier that day. Mast discharged the claimant for drinking pop he did not pay for and for not admitting he had some pop without paying for it. After he was discharged, the claimant then remembered he had some pop earlier that day and offered to pay for it. Prior to this incident, the claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The claimant violated the employer's rule about paying for all beverages consumed at work. Even though the claimant violated the employer's policy, his failure to pay 32-cents for pop he drank at work does not amount to a substantial disregard of the employer's interests.

The claimant's testimony that when he talked to Mast around 3 p.m. he did not think about or remember drinking pop earlier that day when he was waiting to talk to the store director is credible. Since the claimant's job was not in jeopardy prior to this incident and there had been no previous problems of a similar nature with the claimant, this isolated incident does not rise to the level of work-connected misconduct. Therefore, as of September 12, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's October 13, 2010 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit

work-connected misconduct. As of September 12, 2010 decision (reference 01) the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs