

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY O WALLROFF
Claimant

APPEAL NO. 09A-UI-04803-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 03/01/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 23, 2009, reference 01, which denied benefits based upon his separation from Hy-Vee, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on April 22, 2009. The claimant participated personally. Participating as witnesses were Megan Glenn and Nick Stokes. The employer participated by Tim Speir, hearing representative, and witnesses Ashley Breitbach and Mike Gotto.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a part-time night stocker for Hy-Vee, Inc., from July 31, 2008, until March 2, 2009, when he was discharged from employment. The claimant was discharged based upon an incident that took place on February 27, 2009. At that time, the claimant was observed misappropriating company cigarettes by inventory control managers. Due to losses in the cigarette department, two Hy-Vee employees were stationed in a position outside the store observing employees who may be leaving the store without paying for purchases or otherwise misappropriating company property. The witnesses observed the claimant remove one or more packages of cigarettes and place them in his pocket without paying for them, in violation of company policy. Under established company policies, employees who misappropriate company property are subject to immediate termination. The claimant was aware of the policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to establish that the claimant was discharged for misconduct in connection with his employment. It is.

In this case, the claimant was discharged based upon the observation of two company employees that observed Mr. Wallroff misappropriating company cigarettes on the night of February 27, 2009. Both witnesses testified under oath that they observed the claimant remove cigarettes from a cigarette area in the store and place the cigarettes into his pocket without paying for them. The evidence establishes that the witnesses had no bias against Mr. Wallroff and had no reason to fabricate their testimony.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged for violation of a known company policy. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 23, 2009, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified and benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw