

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI L BROWN
Claimant

APPEAL NO. 08A-UI-07202-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 07/06/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 31, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Wes Snook participated in the hearing on behalf of the employer with a witness, Gloria Bernstein.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a pharmacy technician from August 28, 2006, to July 8, 2008. On December 27, 2007, a customer asked for a prescription using their last name. The claimant looked for the prescription and then asked the customer if the prescription was for a customer, using that customer's first name. The customer replied that the prescription was for another person and recited the first name of that person. The claimant was warned about violating the Health Information Privacy and Portability Act (HIPPA) by disclosing that the pharmacy had a prescription for a person identifying the person by name. She also received a written warning on May 14, 2008, after a customer complained to the board of pharmacy that he became uncomfortable when the claimant responded to his question about what his prescription was for. The claimant understood that under the board of pharmacy rules and the employer's policy, pharmacists were the only individuals allowed to provide information to customers about prescriptions. The claimant does not recall and does not believe she was the person who talked to the customer about the prescription, but acknowledged receiving this final warning.

On July 7, 2008, a husband and wife came in the pharmacy. The wife was questioning why a prescription was more expensive in the Hy-Vee pharmacy than it was at another pharmacy. The claimant and a pharmacist tried to explain the difference. The claimant mistakenly believed the husband had a prescription to pick up. She told the couple: "we have a prescription for Richard." The husband responded that his name was Jay, and the couple left. The claimant did not provide any additional information about the prescription.

The pharmacy manager overheard the end of the conversation with the couple. On July 8, 2008, the employer discharged the claimant because management considered the claimant had violated HIPPA by disclosing there was a person named Richard with a prescription in the pharmacy.

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 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 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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated July 31, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw