

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RITA L SULLIVAN
Claimant

APPEAL NO. 11A-UI-07192-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/01/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rita Sullivan filed an appeal from a representative's decision dated May 24, 2011, reference 01, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on June 22, 2011. Ms. Sullivan participated personally. The employer participated by Leah Hefel, Human Resources Manager; Shane Bussan, Assistant Grocery Manager; and Amy Kramer, Perishables Manager. The employer was represented by Alice Thatch of Corporate Cost Control, Inc.

ISSUE:

At issue in this matter is whether Ms. Sullivan was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Sullivan was employed by Hy-Vee, Inc. from August 28, 2000 until April 15, 2011. She worked approximately 30 hours each week as a cashier. She was discharged for being rude to a customer.

On April 13, 2011, Ms. Sullivan was operating the register in the "express" lane, which was intended for purchases of 12 items or less. Two customers were sharing one cart and the first customer had a total of 26 items. When she was done ringing up the first customer, Ms. Sullivan asked the customer to use the full-service lanes in the future when she had more than 12 items. The customer became upset and said she did not need a lecture and that she felt Ms. Sullivan was being rude. The two continued to exchange words and the customer asked to speak to a member of management. Ms. Sullivan requested that Shane Bussan, the assistant grocery manager, come over.

When Mr. Bussan came to the register, Ms. Sullivan explained that the customer was upset because she had been asked to use the full-service lane. Mr. Bussan apologized to the customer. Ms. Sullivan told him, in front of the customer, not to apologize. He took the customer aside to continue the apology while Ms. Sullivan finished ringing up the customer's

friend, who had 29 items in the cart. As she was leaving the store, the first customer was making comments about taking “my money” elsewhere in the future. Ms. Sullivan responded by saying “that’s my money, taxpayer money.” Her comment was an apparent reference to the customer using food stamps for her purchase. The customer overheard the comment and accused Ms. Sullivan of discriminating against her because she used food stamps.

After the incident, Ms. Sullivan was taken to the office to discuss the matter. She made reference to the customer as “white trash.” She also said she could not believe “this is fucking happening.” As a result of her conduct with the customer and in the office, she was discharged on April 15, 2011.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Sullivan was discharged for being rude to a customer. The incident began when she asked the customer to use the full-service lane in the future when she had more than 12 items. Although her statement may have been with the best of intentions, it clearly upset the customer. Rather than retreating from the incident, Ms. Sullivan continued to exchange words with the customer, resulting in management involvement.

If Ms. Sullivan’s involvement had stopped when Mr. Bussan came over, the administrative law judge might be inclined to view her conduct as an isolated instance of poor judgment. However, it did not end at that point. It was not unreasonable for a manager to apologize to a customer who was having a bad experience in the store. Ms. Sullivan knew or should have known that telling the manager, in front of the customer, that he should not apologize might further upset an already angry customer. Ms. Sullivan further escalated the incident when she made a comment in reference to the customer’s use of food stamps. Her comment could have given the impression that persons using public benefits had no right to expect civil treatment at Hy-Vee.

Ms. Sullivan’s exchanges with the customer took place in an open area of the store where it could be seen and heard by others, including other customers. Her conduct had the potential of jeopardizing the store’s good customer relations. The administrative law judge appreciates that this was an isolated instance of such conduct on Ms. Sullivan’s part. However, her continued antagonistic behavior towards the customer after she was clearly on notice that the customer was angry and upset escalated what could have been a minor incident into a substantial disregard of the employer’s standards. As such, her actions constituted misconduct within the meaning of the law. Accordingly, benefits are denied.

In concluding that misconduct has been established, the administrative law judge has not included Ms. Sullivan’s conduct when meeting with management after the incident with the customer. It was a private meeting and she was letting off steam. Although she used profanity, it was not directed at any individual and did not involve any name-calling. She did refer to the customer as “white trash” but not in the customer’s presence.

Ms. Sullivan’s contention that her actions were caused by the effects of medication was not persuasive. She has been on the same medication for a number of years and did not have any history of behaving inappropriately at work as a result of taking or not taking the medication as prescribed.

DECISION:

The representative's decision dated May 24, 2011, reference 01, is hereby affirmed. Ms. Sullivan was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs