

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN M SHRADER
Claimant

APPEAL NO. 08A-UI-09937-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/24/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joan Shrader, filed an appeal from a decision dated October 16, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 12, 2008. The claimant participated on her own behalf. The employer, Hy-Vee, participated by Store Director Josh Asche and was represented by Unemployment Services in the person of Tim Spier.

ISSUE:

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

FINDINGS OF FACT:

Joan Shrader was employed by Hy-Vee from May 1, 1994 until August 26, 2008 as a full-time cashier. On March 15 and June 11, 2007, the claimant received written warnings for selling alcohol to minors. The second warning informed her that any further incidents would result in discharge. On August 21, 2007, she again sold alcohol to a minor but was not discharged because the computer did not “flag” the item to tell the cashier to ask for ID, so she was given another written warning and suspended for a week.

On August 21, 2008, a third-party investigation company sent a minor through the claimant’s check out with alcohol. The computer “flagged” the item and told Ms. Shrader to ask for identification which she did. The customer showed an identification in a plastic sleeve but with the birth year obscured. Hy-Vee policy is to have the identification removed and presented to the cashier for examination. The cashier is not, under any circumstances, to merely ask the customer for their birth year. The claimant did not examine the identification but only asked the customer what her birth year was and was given false information. On that basis the claimant concluded the sale.

The third-party investigator sent the report to Store Director Josh Asche on August 25, 2008, and Ms. Shrader was discharged the next day for another violation of the company policy.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised her job was in jeopardy as a result of her failure to obtain proper identification from customers purchasing alcohol. Although the customer did present identification to the claimant on this final incident, she did not follow proper procedure to personally examine the identification when the birth year was obscured by the plastic sleeve. This jeopardized the employer's license to sell alcohol and exposed it to legal and civil liabilities. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 16, 2008, reference 01, is affirmed. Joan Shrader is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css