

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA K DYER
Claimant

HY-VEE INC
Employer

APPEAL NO: 13A-UI-12695-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 4, 2013, reference 01, that held she was discharged for misconduct on October 10, 2013, and benefits are denied. A telephone hearing was held on December 5, 2013. The claimant participated. Tim Flaherty, Store Director, and Aaron Heyer, Representative, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 18, 2004, and last worked for the employer as a full-time optician on October 10, 2013. She signed for the employer policies that include provisions against discrimination and harassment. The policy provides an employee may be terminated for misconduct or mistreatment of any customer or employee. This includes verbal abuse or harassment.

On October 8 the vision center manager reported to store management how claimant had been rude to him and acted inappropriately to a customer. Claimant rudely and loudly requested the manager to assist her. She commented to the customer her insurance was ridiculous. She told the manager he didn't know what he was doing. She embarrassed the customer about the order and payment. She told the manager he should just walk.

Claimant had been issued written disciplinary warnings on August 1, and July 1 for her inappropriate and unprofessional behavior that created a hostile work environment. She was put on notice in the latest warning she could be terminated.

Store management reviewed claimant's written disciplinary record that included job performance warnings, and it discharged her on October 10 for this and the October 8 incident.

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 administrative law judge concludes employer established claimant was discharged for misconduct on October 10, 2013 for repeated violation of employer policy.

Although claimant adamantly denies she acted inappropriately, the employer testimony on documents show she was repeatedly disciplined for unprofessional behavior to the point she created a hostile work environment for co-workers and customers. Her claim she was being forced out by the employer is unfounded. She offered no complaint document to the employer with this claim and the store manager denies it. She worked for the employer at the same store for almost ten years, and it is highly unlikely the employer wanted to force her out.

Claimant signed for two written disciplinary warnings (July 1 and August 1) that involve her unprofessional behavior that contain no comment or written response of denial. The vision center manger offered a detailed written statement about claimant's rude conduct to him and the customer on October 8 that is more persuasive than her denial in light of the prior discipline.

DECISION:

The department decision dated November 4, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on October 10, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs