

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH HESS

Claimant

APPEAL NO: 09A-UI-10531-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

OC: 06-14-09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 15, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 14, 2009. The claimant participated in the hearing. Chuck Underhill, Store Director; Russ Zieglowski, Kitchen Manager; and Tim Spier, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time kitchen clerk for Hy-Vee from August 22, 2005 to June 17, 2009. Kitchen Manager Russ Zieglowski had several conversations with the claimant about not paying for her meals and/or grazing. The conversations were considered verbal warnings. On April 25, 2009, she received a written warning and Mr. Zieglowski and Store Director Chuck Underhill told the claimant she had to pay for all of her meals before consuming them. She had been observed snacking and grazing but the employer could not prove she took a full meal without paying for it. On June 17, 2009, the claimant was at the register taking breakfast orders. Mr. Zieglowski was in the kitchen even though he was on vacation. He noticed the claimant's friend in line for breakfast so he contacted Mr. Underhill to watch for the receipt. He also asked the breakfast cook what was made for the claimant's friend's breakfast order and when he compared that information with the receipt he discovered the claimant undercharged her friend. She gave him the \$1.00 employee discount in violation of the employer's policy. The claimant testified her friend ordered one-half of a breakfast skillet and she gave him the \$1.00 employee discount. According to the employer the total should have been \$4.98 plus tax but she undercharged him. In light of the employer's progressive disciplinary policy and the fact she had received several verbal warnings and a written warning for similar conduct in the past the employer terminated her employment for theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 admitted giving her friend the employee discount in violation of the employer's policy. She received verbal warnings and a written warning about grazing and consuming food without paying for it in the past and according to the employer's progressive disciplinary policy the next step was termination of the claimant's employment. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The July 15, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css