

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY D SWICK
Claimant

APPEAL NO: 11A-UI-14977-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/23/11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 9, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Alice Rose Thatcher, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf. Terry Graybill, the warehouse director, testified on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2005. He worked full time in the warehouse. When the claimant started working, he received a copy of the employer's policy handbook. (Employer Exhibit One.) The handbook informs employees they can be discharged for unauthorized removal of company property.

The claimant worked the evening shift on October 17-18. The claimant worked in the pallet room during this shift. A co-worker told him before he left work that a carton of cigarettes was missing on a load that was to be loaded the next morning. The supervisor on duty was told about the missing carton. He put up a note advising the morning shift employees and supervisor about the missing carton of cigarettes.

After Graybill learned there was a missing carton of cigarettes, he asked department heads to look for cigarette packages that had a certain stamp number on it. Two days later, a supervisor found an empty pack of cigarettes at an outside break table. The claimant smoked this brand of cigarettes. This pack of cigarettes had the same number stamped on it that the missing carton of cigarettes had. (Employer Exhibit Six.) The employer talked to the claimant about the cigarettes and sent him home early on October 21.

Graybill talked to the claimant on Monday, October 24. The claimant told the employer his wife bought him cigarettes in Minnesota around Labor Day. The employer did not believe the claimant because the employer had not used the stamp that was on the cigarette pack until October 11. (Employer Exhibit Five.) The employer receives rolls of cigarette stamps for each state. Each roll has specific numbers assigned to it. The stamp on the cigarette carton found at the break table came from the employer's distribution center. The roll with that number was not used until October 11, 2011. (Employer Exhibit Four.)

The employer discharged the claimant on October 24, 2011, for taking a carton of cigarettes without authorization. (Employer Exhibit Two.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The issue in the case revolves around the credibility of the evidence. The claimant testified he did not take the carton or pack of cigarettes the employer found on a break table. The claimant acknowledged he smoked the brand of cigarettes found on the break table. The claimant also acknowledged that he did not understand how cigarette stamps were used. The employer presented evidence that the pack of cigarettes found on the break table came from the employer's distribution center. The employer did not use the stamp number on the pack of cigarettes until October 11. Since neither party had any witnesses with first-hand personal information about what happened during the claimant's October 17-18 shift or on October 21 when the claimant was sent home early, the claimant's testimony must be weighed against the stamp number on the pack of cigarettes. A preponderance of the evidence establishes that the pack of cigarettes the claimant was smoking came from the carton that was missing. Based on the evidence – there is no other logical explanation. The claimant's wife could not have purchased the pack of cigarettes found at the break table in Minnesota in early September. The employer established the claimant removed company property, cigarettes, without authorization. The claimant committed work-connected misconduct. As of October 23, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 9, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 23, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs