

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YOLANZA L CHAMBERS
Claimant

APPEAL NO. 09A-UI-11456-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/05/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated August 5, 2009, reference 01, which held that no disqualification would be imposed regarding Yolanza Chambers' separation from employment. After due notice was issued, a hearing was held by telephone on August 25, 2009. The employer participated by Greg Wery, Store Director; Don Gallagher, Assistant Fuel Station Manager; Brian Wilken, Store Operations Manager; and Annette Ellis, Fuel Station Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. The employer was represented by Tim Speir of Unemployment Insurance Services. Mr. Chambers did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Chambers 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: Mr. Chambers was employed by Hy-Vee, Inc. from May 5, 2007 until September 12, 2008. He worked approximately 27 hours each week at the employer's fuel station, which is a separate building from the grocery store. He was discharged for repeated tardiness and for allowing customers to drive off without paying for gas.

Mr. Chambers was scheduled to report to work at 4:30 p.m. on June 17, June 27, and July 18, 2007. He called on June 17 to report that he was running late because of a tire problem. He arrived at work at 5:05 p.m. The employer had to call him on June 27 and July 18 and he reported to work at 5:00 p.m. on both dates. Mr. Chambers was 15 minutes late on January 26 and ten minutes late on February 26, 2008. The employer had to call him again on June 24 when he failed to report to work or call by his 10:00 a.m. start time. The final attendance infraction was on September 12 when Mr. Chambers called to report that he would be ten minutes late. However, he did not report for work or re-contact the employer. He had received several written warnings about his tardiness.

In making the decision to discharge, the employer also considered the fact that Mr. Chambers failed to follow procedures for gas purchase. Customers had the option of paying at the pump, pre-paying inside the store, or paying inside after pumping. If the customer opts to pay after pumping, the attendant is to make a note of the license plate number and model of the vehicle. The employer provided binoculars to enable the attendants to see the plates. The information is necessary to enable the employer to pursue legal means of obtaining payment for gas in the event the customer drives away without making payment.

On August 24, September 6, September 8 and twice on September 11, 2008, Mr. Chambers had customers drive off without paying for gas. He had not obtained the license plate number or model of the vehicle on any of the five occasions. It is the employer's policy not to allow the purchase if the attendant cannot see the license plate.

Mr. Chambers filed a claim for job insurance benefits effective July 5, 2009. He has received a total of \$1,120.00 in benefits since filing the claim.

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 section 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). The primary reason for Mr. Chambers' discharge was his repeated tardiness. He had received several written warnings but continued to report to work late. The evidence of record does not establish any reasonable cause for the tardiness and, therefore, it is unexcused. The final incident of September 12, 2008 demonstrated a blatant disregard for the employer's standards. Mr. Chambers indicated he would be ten minutes late but never appeared for work or called the employer back to indicate he would be absent rather than late.

Mr. Chambers also blatantly disregarded the employer's interests and standards by not following the correct procedures at the fuel station. By not making a note of vehicle license plate numbers, he made it impossible for the employer to take legal recourse to obtain payment from customers who had driven off without paying for gas. After considering all of the evidence, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Chambers has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment.

As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated August 5, 2009, reference 01, is hereby reversed. Mr. Chambers was discharged for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Clams to

determine the amount of any overpayment and whether Mr. Chambers will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css