

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE KRIENERT**  
Claimant

**APPEAL NO: 07A-UI-01779-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01-21-07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 13, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 6, 2007. The claimant participated in the hearing. Kara Tilley, Personnel Manager; Dan Mathis, Assistant Kitchen Manager; Pat Tinder, Delicatessen Manager; and David Williams, Employer's 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 full-time deli clerk for Hy-Vee from August 17, 2004 to January 11, 2007. On January 10, 2007, Assistant Kitchen Manager Dan Mathis observed the claimant take a sandwich from the deli area, bypass the three cash registers and go to the cafeteria area to eat. On January 11, 2007, Mr. Mathis reported the situation to Deli Manager Pat Tinder who spoke to Personnel Manager Kara Tilley. They called the claimant to the office and asked if she knew why she had been asked to come to the office and the claimant replied she thought it was because she had charged another employee an incorrect price for her food but could not think of any other reason she would be called to the office. The employer asked her if she paid for her sandwich prior to eating it and the claimant said no but she paid for it later when she purchased toilet paper with cash before leaving work around 9:30 p.m. but stated she did not have a receipt and did not recall who the cashier was. The employer checked all transactions for toilet paper and a sandwich between the time frames provided by the claimant but did not find a transaction for those items. The employer met with the claimant again and asked her if she was sure she had paid for the sandwich and the claimant admitted she did not pay and the employer terminated her employment for unauthorized removal of store property. The claimant admitted she lied because she felt the employer's questioning was intense and they told her

they had fired someone in the past for eating two nachos. The employer's policy requires employees to pay for food before it is consumed and to carry the receipt for the food.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant did not pay for her sandwich prior to eating it per the employer's policy. Additionally, when questioned about the situation by the employer the claimant was dishonest in stating she paid for it later when buying another item before leaving the store and did not admit she lied until after forcing the employer to go back through all transactions during that time frame. While the claimant may have felt uncomfortable, or even intimidated, when questioned by the employer that does not excuse her behavior in being dishonest with the employer. The claimant violated the employer's policy and was not honest about it when confronted by the employer. 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). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The February 13, 2007, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$156.00.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs