

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D MILLER
Claimant

APPEAL NO. 09A-UI-18476-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 11/01/09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2009 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 21, 2010. Claimant participated with John Lewis and Roger Pitts. Employer participated through Manager of Store Operations Stacy Dixon, Michael Bauer, and Bob Taylor and was represented by Tim Spier of Unemployment Insurance Services. Employer's Exhibits 1 and 2 were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an assistant store manager and was separated from employment on November 3, 2009. On October 30 claimant and his girlfriend consumed food without paying for it and used his supervisor number to override his own transaction. He did not return later to pay for them or provide a copy of the cancelled check he claimed was written in payment later the same night. Pay Station Clerk Max Poland reported the transaction to upper management and an investigation determined that there were eight similar transactions dating back to August 3, August 26, September 23, and October 3, 4, and 16, 2009. When confronted, claimant wrote that he may have forgotten to pay for a meal or his Hy-Vee card may have been rejected but he paid for the items at the end of the night or the next day. Dixon reviewed the unrecalled transaction reports and investigated payments at all registers for that day and the next but found no evidence of payment. (Employer's Exhibit 1) The employer's policy requires payment for meals before they are consumed. He did not tell other employees to record the transaction, have an in-store charge created by another manager, or make other arrangements for payment. Employees, including managers, are not allowed to check out their own purchase. (Employer's Exhibit 2)

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to pay for food on October 30 and several earlier occasions amounts to theft and a violation of reasonable company policy. As a member of management, he is charged with familiarity of the work rules to a greater degree than a subordinate employee who reported the irregularity. His claims of later payment do not resolve the policy violation of consumption of food before payment, and his overall denial is not credible because of the apparent failure to even attempt to provide a cancelled check allegedly presented for payment. At minimum, the violation of reasonably known company policy, and at most, theft, amount to job misconduct when viewed from either perspective. Benefits are denied.

DECISION:

The November 30, 2009 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw