

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANN C FELDERMAN**  
Claimant

**APPEAL NO: 08A-UI-11020-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10/12/08 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's November 12, 2008 decision (reference 01) that concluded Ann C. Felderman (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2008. The claimant participated in the hearing and was represented by Susan Hess, attorney at law. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from four witnesses, Chuck Donnelly, Matt Wilgenbush, Justin Hendrickson, and David Kozak. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 8, 1988. Since about 2001 she worked full time as a food court pay station clerk at the employer's Dubuque, Iowa store. Her last day of work was October 14, 2008. The employer discharged her on that date. The reason asserted for the discharge was returning pop money to a customer, thereby discounting merchandise without management approval.

Mr. Wilgenbush was a regular customer who ate at the food court several times a week with his coworkers from an outside employer. He virtually always got a pop with his meal. On October 13 he went through the line and the claimant rang up his meal and added on the \$1.59 charge for a pop. As she gave him his cup for him to get his pop from the self-service soda fountain, he asked her if she had charged him for pop, that he was going to have water. She apologized and said she would take care of it when she had a chance. She turned to take care of the customers waiting in line. Mr. Wilgenbush had tried to tell the claimant not to worry about the pop charge, that he would go ahead and get a pop, but she did not hear him as she was

taking care of the next customers. Mr. Wilgenbush proceeded to get himself some pop and joined his coworkers at a lunch table.

A few minutes later the claimant came over and put \$1.59 on the table by Mr. Wilgenbush. He attempted to decline, again indicating he had gone ahead and gotten a pop, but the claimant demurred, telling him he was a student and could use the money to buy a beer. While she recognized that he was attempting to decline the money, she did not consciously realize he had gotten a pop, but was more concerned that she had made the mistake of assuming he intended on getting a pop and had charged him for the pop, when he had not planned on getting the pop.

There had not been any prior problems regarding the claimant. The matter came to the employer's attention because Mr. Hendrickson, a coworker of Mr. Wilgenbush, was at the same lunch table, and he is the son-in-law of Mr. Donnelly, the store director.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her refunding the money for the pop to Mr. Wilgenbush. The employer has not established that the claimant's refunding of the money for the pop that Mr. Wilgenbush had not intended on buying was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's November 12, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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