

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER R HONEA**  
Claimant

**APPEAL NO. 12A-UI-02370-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01-22-12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 27, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 10, 2012. The claimant did participate. The employer did participate through Natalie McGee, director of human resources for the Chariton warehouse; Jamie Buckalew, manager of security at the Chariton warehouse; Katie Werts, pharmacy technician; Betsy Lukazsky, inbound freight coordinator; and Jody Sandy, director of inbound freight, and was represented by Sabrina Bentler of Corporate Cost Control, Inc. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an inbound freight coordinator, full-time, beginning June 28, 2008, through December 24, 2011, when she was discharged. In order to purchase some medications containing pseudoephedrine, a person must present their driver's license and sign a purchase log. This is to prevent one single person from purchasing large quantities of pseudoephedrine that could be used for the manufacture of methamphetamine. The claimant worked right next to Betsy Lukazsky at the Hy-Vee warehouse in Chariton, Iowa. Their desks were only separated by a work table. On December 23 the claimant went through the drive-through window at the Hy-Vee pharmacy and attempted to purchase medication containing pseudoephedrine. When the pharmacy technician, Katie Werts, asked her for her driver's license and to sign the purchase log, the claimant presented the driver's license of Betsy Lukazsky and forged Ms. Lukazsky's name. Ms. Werts knew Betsy Lukazsky and knew that the claimant was not her. She did not sell the claimant the pseudoephedrine but had her pull her car ahead. Ms. Werts took down the license plate of the car as the claimant drove away. The police were contacted and an investigation begun. During the police investigation, Ms. Werts positively identified the claimant as the person presenting Ms. Lukazsky's driver's license as her own and signing the log as "Betsy Lukazsky." When the police contacted

Ms. Lukazsky, she confirmed that her driver's license had been stolen while she was at work with the claimant on the same day the claimant tried to use it to purchase pseudoephedrine at the Hy-Vee pharmacy. Surveillance videos from the warehouse where the claimant worked show her driving her own car that was registered to her that Ms. Werts took the plate number from as she drove through the pharmacy at Hy-Vee. Criminal charges are pending against the claimant. When interviewed by the employer, the claimant denied stealing Ms. Lukazsky's driver's license and denied attempting to purchase pseudoephedrine at the Hy-Vee store with a stolen driver's license. Based on the police investigation, and their own internal investigation the employer discharged the claimant for lying to them and for theft of Ms. Lukazsky's driver's license.

### **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). It is not unreasonable for an employer to expect employees not to steal from each other. The Administrative Law Judge is convinced that the claimant did steal Ms. Lukazsky's driver's license and then tried to use it to purchase pseudoephedrine from the pharmacy at Hy-Vee. The claimant is only denying her

conduct in an attempt to obtain unemployment insurance benefits and to avoid criminal liability. The claimant's actions, that is stealing a driver's license from a coworker and attempting to use that license to purchase pseudoephedrine, is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The February 27, 2012 (reference 01) decision is affirmed. 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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