

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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HY-VEE INC
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Appeal Number: 05A-UI-02068-LT
OC: 01-16-05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 15, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 15, 2005. Claimant did participate. Employer did participate through Brian Moon, Chad Schoening, and Angie Boyer and was represented by David Williams of Talx UC Express. Pat Howarth observed. Employer's Exhibits 1 through 3 were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time ("regular time" 30 hours per week) salad bar clerk from 1998 through December 29, 2004 when she was discharged. On December 29 a coworker, Angie

Boyer, who worked with claimant on Saturdays, watched her scratch her arm, reach for a paper towel to swab the blood, throw the paper towel away and turn back to touch the tortilla rolls she was slicing. Boyer confronted her about washing her hands before claimant did touch the food. (Employer's Exhibit 1) Chad Schoening gave claimant a November 22, 2004 final warning for improperly date coding products, leaving the restroom without washing her hands, and wearing gloves out of the work area without changing them upon her return. (Employer's Exhibit 2) Near Thanksgiving, Boyer also reported she saw claimant fail to wash her hands after using the bathroom and using the same gloves during cross contamination procedures with food and work with holes in her gloves.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Claimant initially did not recall the final incident details that led to her separation and later claimed to have been joking with Boyer about the issue, thus her credibility on the matter is diminished. Since employer is in the business of selling prepared food at the location where claimant worked and her job involved handling the food products to be consumed, employer was reasonable to expect strict compliance with food handling and sanitations rules. Claimant violated these rules on at least three occasions and had been repeatedly counseled about the proper procedure yet failed to follow the most basic common sense step to wash her hands after touching blood on her arm before reaching to touch food she was preparing for customer consumption. Benefits are denied.

DECISION:

The February 15, 2005, 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.

dml/kjf