

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE E BOUVIER**  
Claimant

**APPEAL NO. 14A-UI-07672-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 06/22/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 16, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Council Bluffs, Iowa, on August 26, 2014. The claimant participated. Participating as a representative/witness was Butch Bouvier, the claimant's spouse. Participating as a witness was Sheri Keef, Daughter. The employer participated by Mr. Bruce Burgess, Hearing Representative by telephone and witness Mr. Chris Higginbotham, Store Director. Ms. Cathy Mardensen was present as an observer. Employer's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Catherine Bouvier was employed by Hy-Vee, Inc. from August 30, 2005 until June 19, 2014 when she was discharged from employment.

Ms. Bouvier was discharged on June 19, 2014, based upon the employer's belief that the claimant had obtained a substantial dollar value credit from Hy-Vee, Inc. by turning in "Baby Bucks" coupons, and that she had obtained a substantial number of the coupons from Hy-Vee customers and from her daughter in violation of the store policy for redemption of coupons by company employees. Hy-Vee policy required that the coupons that employees used must be obtained from the personal purchases of baby products by the employees from Hy-Vee and prohibited the use of coupons that were not from an employee's personal purchases. (See Employer's Exhibit 3). When questioned about the matter, Ms. Bouvier had stated that she was generally aware of the policy and stated that she had been "keeping baby bucks that customers didn't want." Based upon the dollar value of the initial credit amount, and the claimant's statement, the employer concluded that Ms. Bouvier had been accumulating numerous baby buck coupons from company customers while she was working, and the coupons did not reflect

purchases she had made. The employer considered this to be a serious violation of policy and a decision was made to terminate Ms. Bouvier from her employment.

The claimant and other Hy-Vee employees were made aware of the company's policy on the use of the coupons by employees via a memo provided to company employees and acknowledged by the claimant.

It appears that the baby buck coupon redemption program had been in effect for a substantial period of time. When informed the program was ending the claimant turned in a number of the coupons that she had been saving from her personal purchases during the time of the program was ongoing. The claimant also included a small number (approximately two coupons) that had been given to the claimant by company customers who stated that they were not going to use them. The claimant also included a similar small number of coupons that had been given to her by her daughter for baby product purchases that had been made by Ms. Keef.

Ms. Bouvier turned in the baby buck coupons at a Hy-Vee location near her daughter's house because it was convenient. At the time that the claimant turned in the coupon at the other Hy-Vee location, the clerk made a substantial error, apparently giving the claimant dollar-for-dollar credit for redemption, instead of the proper ratio of \$10.00 coupon credit for each \$150.00 of purchase coupons turned in. Ms. Bouvier noted the error and immediately attempted to correct it both at the Hy-Vee location where she cashed in the coupons and at the location where she was employed. Because of the error, the coupon card was not able to be negotiated through the Hy-Vee computer system and came to the attention of Hy-Vee, Inc. management.

Prior to discharging the claimant the employer called Ms. Bouvier to a meeting with loss prevention representatives and company management. The meeting initially focused on the substantial amount of the refund initially authorized to Ms. Bouvier. Based upon the claimant's statement it appeared that the claimant had been gathering coupons from company customers in substantial numbers for a substantial period of time. The employer concluded that the claimant was not only violating the policy but also using company paid work time to do so. Because of these factors a management decision was made to terminate Ms. Bouvier from her employment. Prior to her discharge the claimant had not been warned or counseled for any reason.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

In the case at hand the employer discharged the claimant based upon its belief that she had gathered substantial numbers of coupon receipts from company customers while she should have been working and subsequently received a substantial coupon refund credit because of her violation of company policy. The employer made a management decision to escalate the discipline to discharge, because the claimant had stated that she was aware of the coupon redemption policy and had made a statement that made it appear that she had used numerous coupons from customers in violating the policy.

Although, the initial dollar amount of the coupon redemption credit made it appear that the claimant had engaged in an ongoing and substantial violation of the company's coupon policy, the evidence in the record establishes that the initial coupon value amount had been highly inflated in error by a clerk and that the claimant had immediately attempted to resolve the error both at the store where the credit had been given and at the Hy-Vee store where she was employed. Ms. Bouvier was candid in her testimony that she knew about the company policy but did not believe that the very limited number of coupons that had been given to her on two occasions by company customers and on one occasion by her daughter would be a serious violation of the policy, or result in her termination from employment. Ms. Bouvier testified that the coupons that she had submitted for redemption were almost all for baby product purchases that she had made during the course of the program and that on only two occasions had

company customers given her coupons that they did not intend to use. The claimant testified that the number of coupons given to her by her daughter were very few.

The administrative law judge does not condone or sanction the violation of company policy by employees, but concludes based upon the evidence in the record, that the number of coupons submitted by the claimant for purchases made by others were a very small part of the true approximate \$75.00 value of refunds garnered by the claimant.

The question before the administrative law judge in this case is not whether the employer has a right to discharge the claimant for this reason, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Bouvier may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct in this matter was an isolated incident of poor judgment in an otherwise unblemished employment record and does rise to the a level that constitutes misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are therefore allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 16, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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