

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILL D AYERSMAN**  
Claimant

**APPEAL NO. 11A-UI-01853-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/05/10**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 11, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 17, 2011. Claimant participated. Employer participated through Perishables Manager Joe Connell and Manager of Store Operations Kyle Leeds and was represented by Alice Rose Thatch of Corporate Cost Control, Inc.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment 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 part-time as a second assistant manager and was separated from employment on December 9, 2010. Her last day of work was December 8. She called in for a shift on December 6 and stated she was ill. On December 7 Connell noticed on Facebook that someone was happy to have seen her in Ames when she was supposed to have been at work. She went to Ames with her roommate to purchase contact lens solution instead of buying it locally. Connell confronted her and she denied knowledge of the issue. She admitted denying the conduct to Connell because she knew it would look bad to the store manager. Connell spoke with employees of the store who saw her there and demoted her to customer service employee and instructed her to clock out and go home. He told her to contact Cole about returning to work. Claimant attempted to call and speak with Cole, who was not available. Cole said she would call her but did not.

## **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 § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

Since Cole did not participate to rebut claimant's testimony about not calling her back, the separation was a discharge rather than a voluntary leaving of employment. Employees owe a duty of honesty to their employer. Claimant's travel out-of-town when she called in sick indicates she was dishonest about her absence and her denial of being in Ames when she called off from her shift was dishonest. This rose to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The February 11, 2011 (reference 01) decision is modified without change in effect. The claimant did not quit but 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw