

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAWRENCE L BOYD**  
Claimant

**APPEAL NO. 13A-UI-11326-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 09/08/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lawrence Boyd (claimant) appealed a representative's October 1, 2013, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Hy-Vee (employer) for theft of company property. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2013. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Aaron Heyer, Employer's Representative, and participated by Max Dains, Store Director.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2009, as a full-time assistant manager. The claimant signed for receipt of the employer's handbook on October 8, 2009, and March 29, 2012. The employer has a no-tolerance policy regarding theft. On August 4, 2013, the employer issued the claimant a written warning for smoking in front of the store. The employer notified the claimant that further infractions could result in termination from employment.

On August 5, 2013, the employer watched a video and discovered the claimant took a pack of cigarettes without paying for it on August 4, 2013. The employer did not tell the claimant that they knew this but they watched his activities. On September 4, 2013, the employer watched a video and discovered the claimant took two energy drinks without paying for them that day. On September 5, 2013, the employer asked the claimant about the three items and the claimant admitted to taking them without paying for them. The employer terminated the claimant on September 5, 2013.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

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 claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally took the employer's property for his own purposes. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's October 1, 2013, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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