

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

SEBRINA R OHARRA  
1160 – 13<sup>TH</sup> ST  
DES MOINES IA 50314

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

TALX UC EXPRESS  
4100 HUBBELL AVE #78  
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-07980-S2T  
OC: 07/04/04 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sebrina O'Harra (claimant) appealed a representative's July 21, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Hy-Vee (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 31, 2004. The claimant participated personally and through her mother Sue O'Harra. The employer was represented by David Williams, Manager of Operations, and participated by Kevin Hudachek, Assistant Store Director; Carolyn Sleeth, Personnel Manager; and Chad Romer, Manager of Perishables. Megan Neville observed the hearing.

#### 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 April 16, 1998 as a part-time cashier and worked in the Windsor Heights location. The employer was offering Baby Bucks to customers who purchased certain items. Customers could exchange \$150.00 of Baby Bucks for a \$10.00 gift card. Each Baby Buck was coded with the time, date and register from which it was issued. Employees were warned that they were to place Baby Bucks that were declined by customers into the coupon drawer.

On October 3, 2003, the claimant was in the employer's Euclid location with \$456.38 in Baby Bucks. After presenting identification she exchanged the Baby Bucks for \$30.00 in gift cards. The employee who made the exchange noticed that the Baby Bucks were all issued from the Windsor Heights store on the same day from the same register. He contacted the Windsor Heights store and explained the exchange. The Windsor Heights assistant store director investigated and found that the claimant had worked as a cashier on the register at the time that the Baby Bucks were issued.

On October 4, 2004, the assistant store director met with the claimant. The claimant admitted taking the Baby Bucks from her register and knew it was wrong. The employer terminated the claimant for dishonesty.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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).

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 employer has established that the claimant did take Baby Bucks with the intent to steal assets from the employer. Employee dishonesty is contrary to the standard of behavior the employer would have a right to expect. The employer has established that the claimant was discharged for misconduct.

#### DECISION:

The representative's July 21, 2004 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided, she is otherwise eligible.

bas/tjc