

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY KETTLE
Claimant

APPEAL NO: 11A-UI-11367-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07-24-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 17, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 12 and continued October 14, 2011. The claimant participated in the hearing with former bakery employee Denise McGinnis. Matt Holbert, Manager of Store Operations; Teresa Guzman, Accounting Coordinator; Gayle Graber; Manager of Perishables; Kenny Walsinger, Assistant Manager; Chuck Osmanski, Store Director; and Paula Mack, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time baker for Hy-Vee from April 21, 2001 to July 23, 2011. The claimant finished her shift July 23, 2011, around 11:30 a.m., clocked out, and went grocery shopping. She picked up \$131.70 worth of goods, loaded many of the products she shopped for into recycled Hy-Vee shopping bags, pushed her cart to the pharmacy department, paid for prescriptions for her mother, and pushed her cart out the pharmacy door which was closest to the employee parking lot. Accounting Coordinator Teresa Guzman was entering the pharmacy doors as the claimant was getting ready to leave the store. The employer had received previous reports that the claimant was taking items so it was watching her and Ms. Guzman notified Manager of Store Operations Matt Holbert that the claimant was leaving through the pharmacy doors. Mr. Holbert asked the three or four checkers whose lanes were open if the claimant came through their lines and all stated she had not. He asked the pharmacy employees if she paid there and was told she only paid for her prescriptions. Mr. Holbert went out to the employee parking lot and stopped the claimant to ask if she had a receipt for her groceries. The claimant first stated she had one but after looking in her cart, car and wallet she could not produce a receipt and Mr. Holbert asked her to return to the store with him where they met in the office Manager of Perishables Gayle Graber. After questioning the claimant about

the incident the employer terminated her employment for theft of groceries. The claimant stated she had a lot on her mind and forgot to pay for her groceries.

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.

While the claimant denies an intent to steal the groceries, the employer had previous reports that she was taking items from the store without paying for them and consequently was watching her actions closely. There is no denying that the claimant took the groceries and the employer treated her as if it would any customer, short of calling the police on her because she was a long-term employee. Regardless of whether the claimant had a lot on her mind that day and forgot to pay for her groceries or intentionally stole \$131.70 worth of items, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The August 17, 2011, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css