

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**QUNITTA R JONES**  
Claimant

**APPEAL NO. 07A-UI-10113-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 09/23/07 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated October 23, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 19, 2007. Although notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by David Williams, Hearing Representative, and witnesses Brad Alpers and Cynthia Moritz. Employer Exhibits One through Seven were received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from August 12, 2006 until September 18, 2007 when she was discharged from employment. The claimant was employed as a part-time courtesy clerk/cashier and was paid by the hour.

The claimant was discharged following an incident that occurred on September 17, 2007. On that date the claimant was observed joking and bantering with another employee about inappropriate subjects in the presence of company customers and other workers. The claimant was observed devoting her attention to the banter and joking with the other employee and not offering even minimal service or accommodation to the customer that she was waiting on. The following day on September 18, 2007, the customer returned to the facility to lodge an official complaint with company management. At that time, Hy-Vee investigated and took statements of the parties including the statement of Ms. Moritz who had personally witnessed the incident that had occurred on September 17, 2007. A decision was made to terminate Ms. Jones based upon this incident. The claimant had been previously warned for similar conduct in the past and

was aware that failure to provide good customer service and/or failure to display a proper demeanor when working with customers could result in her termination from employment.

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

The question before the administrative law judge in this case is whether the evidence establishes that the claimant was discharged for misconduct. It does. The evidence in the record establishes that the claimant had been warned for similar conduct and was discharged after she was personally observed engaging in banter and joking about inappropriate subjects in the presence of company customers while ignoring their customer service needs. The evidence establishes that the subject matter and the comments of the claimant were completely inappropriate. The evidence also establishes that while engaged in the banter and joking, Ms. Jones failed to provide even the minimal amount of customer service that the employer reasonably expected of its cashier/customer service personnel.

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.

For the reasons stated herein, the administrative law judge finds that the employer has sustained its burden of proof in establishing the claimant was discharged for misconduct. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$336.00.

**DECISION:**

The representative's decision dated October 23, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing the claimant meets all other eligibility requirements of Iowa law. The claimant is overpaid unemployment insurance benefits in the amount of \$336.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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