

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA S ROBERTSON**  
Claimant

**APPEAL NO. 09A-UI-16005-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 09-20-09**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 13, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 1, 2009. The claimant did participate. The employer did participate through Nate Swalley, Assistant Director and Laurie Webb, Kitchen Clerk and was represented by Tim Spier of Unemployment Insurance Services.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a checker full time beginning February 27, 1989 through September 18, 2009 when she was discharged.

When customers return cans to the store to obtain a refund of the nickel deposit paid on each can at the time of purchase, they put the can into a machine that counts the total number of cans and then issues a receipt which the customer can take to any cashier to obtain cash for the cans returned. On September 15 the employer's surveillance video showed a regular can returning customer come out of the can room at the same time a can receipt for \$5.75 was printed. No other can receipts were printed during that time period. The customer redeemed the receipt at the register that the claimant was operating. Later the employer discovered through their computer program that the claimant was missing one can receipt from her register and that the can receipt that was missing had been paid out of her register for \$5.75. The claimant admits that on neither September 15 nor September 16 did she return cans to the store and obtain a can return receipt. On September 16 the claimant used a can return receipt for \$5.75 to make a purchase of food from kitchen clerk, Laurie Webb. The can return receipt used by the claimant was one that had already been paid out on the previous day out of the claimant's register. The claimant does not remember how she obtained the can return receipt she used to purchase food on September 16. The employer questioned the claimant and determined that she had used a can receipt that did not belong to her and that had already been

redeemed by its rightful owner, the regular can returning customer. The claimant took a can receipt that did not belong to her. The claimant knew that the employer has a zero-tolerance policy for theft and the claimant was discharge for taking a can receipt to which she was not entitled.

**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 § 96.5-2-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 claimant admitted that she did not return cans to the store on September 15 or September 16, thus she knew or should have known that the can receipt ticket printed and dated on September 15 was not hers to use. The same ticket had been redeemed by the claimant for a regular customer the day before the claimant used it. The administrative law judge finds the claimant's testimony that she just does not remember how the ticket came to be in her possession disingenuous. The administrative law judge is persuaded that the claimant took the can return receipt or ticket and redeemed it at the food counter in an attempt to procure free merchandise from the employer. Her actions amount to theft from the employer and are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The October 13, 2009, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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