

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATRINA D KENT
Claimant

APPEAL NO. 09A-UI-16723-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 01/25/09
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on December 14, 2009. Claimant Katrina Kent participated. Tim Spier of Unemployment Insurance Services represented the employer and presented testimony through Bridget Geipel, Store Director, and cashier Callie Reed. The administrative law judge took official notice of the documented submitted for or generated in connection with the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katrina Kent was employed by Hy-Vee as a full-time customer service manager from May 2009 until October 12, 2009, when Bridget Geipel, Store Director, and Dave Kozak, Safety and Security Officer, discharged her from the employment for theft. On October 8, 2009, Ms. Kent went through a checkout lane to make a personal purchase. Ms. Kent was not feeling well. One or more cashiers noted at the time that Ms. Kent did not look well. Ms. Kent had three beer items on the bottom shelf of her cart. Ms. Kent expected the grocery bagger would grab the items from the bottom shelf of the cart and present them to the cashier. Ms. Kent grabbed one six-pack of beer from the bottom of the cart and presented it to the cashier. Ms. Kent did this in response to another cashier's inquiry about the brand of beer. Ms. Kent did not present the other six-pack or the 30-pack of beer to the cashier and the grocery bagger likewise did not present the additional beer to the cashier. Ms. Kent paid \$55.81 for her groceries. This did not include the additional six-pack or the 30-pack. At the end of the transaction, Ms. Kent said she had forgotten to purchase vitamins. Ms. Kent left the grocery cart at the front of the store, got the vitamins and went through a different checkout lane to purchase the vitamins. A cashier asked Ms. Kent whether she had paid for the beer on her cart and Ms. Kent indicated she had. The two cashiers involved reported the matter to a manager after Ms. Kent left the store. The employer reviewed video surveillance and transaction records stored in its computer system.

The surveillance and the computer records indicated Ms. Kent had not purchased the second six-pack or the 30-pack of beer.

The employer intended to address the matter with Ms. Kent during her shift on Friday, October 9, but Ms. Kent went home early due to illness.

On Monday, October 12, the employer questioned Ms. Kent about the incident. Ms. Kent said she forgot to purchase the additional beer and offered to reimburse the employer. The employer discharged Ms. Kent for unauthorized removal of the employer's property. The unauthorized removal was the sole basis for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence fails to establish that Ms. Kent knowingly failed to pay for the two additional packages of beer. The evidence indicates that Ms. Kent was not feeling well at the time of the transaction. Ms. Kent was not paying careful attention to her merchandise as the cashier was ringing it up. Though Ms. Kent unreasonably assumed the grocery bagger would grab the remaining beer from the bottom of the cart, that negligent assumption does not prove an intention to take the employer's property without paying for it. It is noteworthy that the Store Director, who reviewed the transaction surveillance record, stopped short of alleging theft. The administrative law judge concludes that Ms. Kent negligently failed to pay for all of her groceries on October 8, 2009. This isolated act of negligence would not rise to the level of misconduct and would not disqualify Ms. Kent for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Kent was discharged for no disqualifying reason. Accordingly, Ms. Kent is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Kent.

DECISION:

The Agency representative's October 26, 2009, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw