

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA M PEAVEY
Claimant

HY-VEE INC
Employer

APPEAL 17A-UI-06679-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/11/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Sandra M. Peavey (claimant) filed an appeal from the June 29, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged her for theft of company property. The parties were properly notified about the hearing. A telephone hearing was held on July 19, 2017. The claimant participated. Brian Peavey, the claimant's husband, participated on her behalf and represented her. The employer was represented by James Tranfaglia of Corporate Cost Control and participated through Human Resource Manager Diana Springer, Store Director Ryan Benz, Product Manager Cindy Van Renterghem, and Manager of Store Operations Stephen Larson. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Product Specialist Manager beginning on April 27, 2010, and was separated from employment on June 13, 2017, when she was discharged.

On or about June 7, 2017, Product Manager Cindy VanRenterghem noticed the claimant had two Hawkeye koozies in the cart she used to assist with her job duties. The claimant put the cart with the koozies in her office.

On June 10, 2017, VanRenterghem was counting the koozies for inventory and noticed she was two koozies short. She reviewed the purchase history and discovered the store had not sold a koozie since June 4, 2017, which was before she did her last count. Believing they were in the claimant's office, she went to the claimant's office and did not see them in the cart nor could she find the koozies in any of the claimant's drawers or on her desk.

The claimant returned to work on June 13, 2017 and VanRenterghem asked the claimant about the two koozies. The claimant said she had purchased them. She explained they did not have

tags on them so she had the cashier ring them up for \$3.99 each. As the koozies were sold at \$5.99 each, VanRenterghem said she would need to report the situation to upper management.

VanRenterghem told Store Director Ryan Benz about the situation. He and Human Resource Manager Diana Springer conducted an investigation. Benz determined there were two shifts after which the claimant left the store between June 7 and June 10. The first time she left, she did not purchase anything. The second time she left, she had done some grocery shopping. He reviewed the security tape of when the claimant was checking out with her groceries and determined the claimant did not put any koozies on the conveyor belt. He also reviewed the claimant's receipt and there were no koozies or miscellaneous items purchased for \$3.99.

Benz and Springer then met with the claimant to ask her about the koozies. The claimant stated the koozies were at her house and offered to bring them back. The claimant could not explain how they were removed from the store without being paid for, but stated they were at her house and she would return them. Benz offered to let the claimant watch the video to explain what had happened, but the claimant declined to watch the video. At that point, Benz discharged the claimant for unauthorized removal of store property.

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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events more credible. The claimant's testimony was often conflicting and confusing. The claimant now disputes she has the koozies in her possession. However, she did acknowledge confessing to both VanRenterghem and Benz that she had the koozies in her possession at her house. And, accepting she has memory issues as a result of her MS, it does not explain why she would claim to have them in her possession if she did not.

The employer has presented substantial and credible evidence that the claimant removed the employer's property from the store without authorization. The claimant was the last person seen with the koozies. There were no transactions in which she paid for the koozies. Finally, the claimant confessed to having the koozies in her possession at her house. The employer has an interest in its property remaining in the store unless it is purchased by its employees or customers. The claimant's unauthorized removal of the koozies is a deliberate disregard of the employer's interest and is disqualifying without prior warning. Benefits are denied.

DECISION:

The June 29, 2017, reference 01, unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn