

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENDELL R CROPP
Claimant

HY-VEE INC
Employer

APPEAL NO. 21A-UI-01453-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 11, 2020, reference 01, decision that allowed benefits to the claimant provided the claimant met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on June 15, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on February 18, 2021. The claimant, a minor, did not provide a telephone number for the hearing and did not participate. Nor did the claimant's parent or guardian provide a telephone number for the hearing or participate. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Joe Connell and Scott Foughty. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the September 27, 2020 original claim.

ISSUES:

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: The claimant was employed by Hy-Vee as a part-time cashier at a West Des Moines Hy-Vee store from December 2019 until June 15, 2020, when the employer discharged him for theft from the employer. The employer refers to the conduct as an unauthorized removal of company property. At the start of the employment, the employer provided the claimant with a copy of the employer's work rules and had the claimant sign to acknowledge the work rules. The code of conduct contained within the work rules prohibited consumption or removal of store property without prior payment.

The claimant engaged in a pattern of stealing money from the cash register that culminated in a June 8, 2020 \$520.00 cash register shortage that caught the store's accounting staff's attention. On June 14, 2020, store management referred the matter to Hy-Vee corporate loss prevention

personnel, who commenced their investigation on June 14, 2020. The loss prevention personnel reviewed video surveillance records going back to May 1, 2020, along with transaction records. The video surveillance records reflected several instances in which the claimant engaged in furtive movements indicating theft of cash from the register, culminating in the June 8, 2020 theft of \$520.00. Video surveillance records and associated transaction records reflected thefts of cash totaling \$2,769.00.

On June 15, 2020, loss prevention personnel interviewed the claimant. At that time, the claimant admitted to repeated incidents in which he stole cash, as well as repeated incidents in which he consumed store food without payment. The claimant drafted and signed a statement admitting to the theft of cash and merchandise. The claimant indicated the cash thefts began in February 2020 and totaled about \$3,000.00. The claimant indicated the cost of the employer food he consumed without payment totaled about \$500.00. The claimant was 17 years old at the time of the interview. The employer contacted the claimant's parent, who reported to the store. The claimant and his parent signed a promissory note in which they agreed to compensate the employer for the stolen cash and merchandise. In addition, the claimant signed to authorize a \$200.00 deduction from his owed wages as partial restitution.

The claimant established an original claim for unemployment insurance benefits that was effective September 27, 2020, but has received no benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

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 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Iowa Code Section 714.1(1) and (2), provides, in relevant part, as follows:

714.1 Theft defined. A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.

The evidence in the record establishes a June 15, 2020 discharge for misconduct in connection with the employment. The final incident occurred one week prior to the discharge, came to the employer's attention during the final week of the employment and constituted a current act of misconduct. Each theft from the employer demonstrated a willful and wanton disregard of the employer's interests and constituted misconduct in connection with the employer. In addition, the claimant's thefts were criminal acts wherein the employer was the victim and would have been within its rights to forward the matter for criminal prosecution. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because the claimant received no benefits in connection with the claim, there is no overpayment issue to address.

DECISION:

The December 11, 2020, reference 01, decision is reversed. The claimant was discharged on June 15, 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

March 1, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>