

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OCEAN M FISHER
Claimant

APPEAL NO. 09A-UI-05997-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/15/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Ocean Fisher filed a timely appeal from an April 13, 2009, reference 04, representative's decision that denied unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on May 14, 2009. Ms. Fisher participated personally. The employer participated by Mr. Tim Spier, Hearing Representative, and witness Mr. Scott Walters.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a part-time night stocker for Hy-Vee, Inc. from December 4, 2008 until March 17, 2009 when she was discharged for excessive absence.

Ms. Fisher had been absent on numerous occasions due to the illness of her child. The claimant had supplied medical documentation to the employer verifying that she needed to be absent for medical reasons and had provided notice to the employer for each impending absence. The claimant had received a final warning from Hy-Vee, Inc. and when she continued to be absent due to the illness of her child, she was given the option of resigning or being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that the claimant was absent due to the ongoing medical condition of her child. The claimant provided medical documentation to the employer to support her need to be absent for medical reasons and provided notice to the employer for each impending absence. Although the employer attempted to work with Ms. Fisher for an extended period of time, the employer eventually made a management decision to give the claimant the option of resigning or being terminated as her continuing absence was having a negative effect on other unloading crew members.

The claimant did not choose to voluntarily leave employment but left only because she was given the option of resigning or being discharged. The question in this case is not whether the employer has the right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Fisher may have been a sound decision from a management viewpoint, intentional disqualifying misconduct on the part of the claimant has not been established. Benefits are, therefore, allowed, provided the claimant meets all other eligibility requirements of Iowa 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.

DECISION:

The representative's decision dated April 13, 2009, reference 04, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs