IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

STACY A MCDERMOTT
Claimant

HY-VEE INC
Employer

APPEAL NO. 18A-UI-02339-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/14/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stacy McDermott (claimant) appealed a representative's February 12, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 16, 2018. The claimant participated personally and through Mark Ellis, former co-worker. The employer participated by Peter Streit, Store Director. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 30, 2007. She signed for receipt of the employer's handbook and the Code of Conduct on October 30, 2007. The employer did not issue the claimant any warnings during her employment.

On or about 2012, she was hired as a full-time floral manager. She learned her job in the floral department while working under the previous floral manager but was never trained as the floral manager. When she became the floral manager and had questions, she asked her supervisor. The supervisor could not tell her how to perform her job duties. The claimant continued to complete tasks in the manner of the previous manager.

On December 28, 2017, the employer had a store director's meeting. Employees were told to take any issues regarding inventory to the new store director, Peter Streit, who would start after the first of the year. The claimant and her employees counted inventory in the floral department on December 31, 2017, and the claimant entered the numbers on January 1, 2018. The claimant left for vacation in Texas to visit her sick father on January 2, 2018. The new store director did not start working at the claimant's store prior to her leaving on vacation. She returned to work on January 10, 2018.

On January 10, 2018, she knew there was a problem with the inventory. She had four Santas and she accidentally entered 43 Santas on the inventory. In addition, the spring/Easter inventory, that was stored on shelves in the back and recorded on the inventory, was gone. On January 10, 2018, the claimant and the new store director talked while they filled orders. He said that the fill order inventory was too high. The claimant told him she "finger flubbed" the Santas and the spring/Easter inventory was gone. The store director said, "That happens sometimes".

On January 11, 2018, the store director came to the claimant asking about her silks. The claimant said she did not have any. The inventory for silks was actually ribbons. The store director said, "Okay" and left. During the week of January 10, 2018, the employer sent an e-mail to department heads that hours should be cut.

On January 17, 2018, the store director told the claimant to meet with him at 2:00 p.m. to discuss Valentine's Day. The claimant collected information on Valentine's items and met with the store director. Instead of discussing Valentine's Day items, the store director questioned the claimant about the inventory. He mentioned a discrepancy in the number of bouquets. The claimant did not have documents with her. If she had, she would have told him that the previous store director ordered one-hundred-fifty rose bouquets. The store director talked about items on the inventory that did not have a description. The claimant learned to do this from the previous floral manager. When the two talked about the discrepancy in the number of Santas, the claimant said she was not sure if he wanted her to take a few off each month or a lump sum all at once. The store director did not reply.

On January 17, 2018, the store director terminated the claimant because she made mistakes on the inventory and did not tell anyone until January 10, 2018. He believed this was a violation of a portion of the Code of Conduct that the store director was unable to identify.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

In this case, the claimant had been performing her job without issue for years. As soon as she could have possibly reported her inventory mistake to the new store director, she did. The store director asked her for information about other topics on January 17, 2018, but did not allow her time to look at her documents. The employer terminated the claimant but testified that he did not know what policy she had violated. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 12, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs