

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J TEWELL
Claimant

APPEAL NO: 13A-UI-04270-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/17/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 1, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Bruce Burgess, a representative with Corporate Cost Control, Inc., represented the employer. Conrad Josko, Alex Hunt, Lisa Lambert and Lisa Hoppman appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2010. He initially worked part time, but started working full time in March 2012 as a breakfast cook.

In March 2012, the claimant received a food certification which included food safety training. On March 3, the claimant was working. Hunt also worked. Hunt told the claimant a customer was missing an order of hash browns. Hunt then saw the claimant take cooked hash browns out of the trash, put them on a plate and told Hunt to serve the hash browns to the customer. The employer did not learn about the March 3 incident until March 14. The claimant denied he took hash browns out of the trash and told Hunt to serve them.

The employer discharged the claimant on March 14 for violating the employer's food safety practices or for taking hash browns out of the trash to serve to a customer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented during the hearing, the claimant's action of taking hash browns out of the trash and having them served to a customer amounts to an intentional and substantial disregard of the employer's interests and of the standard of behavior the employer -- connected misconduct. As of March 17, 2013, the claimant is not qualified to receive benefits.

The issues of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since March 17, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's April 1, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 17, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The issues of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits the claimant may have received since March 17, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs