

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SUSANNE M ROLLINGER
411 KENNEDY DR
WAPELLO IA 52653

HY-VEE INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

HY-VEE INC
c/o TALX UCM SERVICES INC
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

ROGER HUDDLE
ATTORNEY AT LAW
PO BOX 226
WAPELLO IA 52653

Appeal Number: 06A-UI-00262-DT
OC: 12/04/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Susanne M. Rollinger (claimant) appealed a representative's December 30, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2006. The claimant participated in the hearing and was represented by Roger Huddle, attorney at law. David Williams of TALX UCM Services, Inc. appeared on the employer's behalf and presented testimony from two witnesses, Kasey O'Kelly and Tim Hopson.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After working for the employer's predecessor owner, the claimant started working for the employer on April 23, 2001. She worked full time as general manager and pharmacy technician in the employer's store. Her last day of work was November 22, 2005. The employer discharged her on that date. The reason asserted for the discharge was destruction of company property.

The employer had been having some concerns regarding security in the pharmacy. Mr. O'Kelly, the store director, had instructed the pharmacist in charge (PIC), who was the claimant's ex-husband, to take some security measures in approximately early October 2005 but had been dissatisfied with the steps taken. The PIC had sought to put in some of his own security cameras, but had been told he could not do so.

About three weeks before November 11, Mr. O'Kelly and Mr. Hopson, the employer's director of loss prevention, safety, and security, had three cameras and recording equipment installed in the pharmacy, but they did not inform the PIC or anyone else at the store. The PIC and the claimant discovered the cameras on November 11. Given that the PIC had been told he could not install cameras and they had not been told of any cameras being installed, they assumed that the cameras had been unauthorized and had perhaps been installed by an assistant manager with whom they had been having difficulties. They removed the cameras and the recording equipment. The claimant took the hard drive of the recording device home and destroyed it between November 11 and November 13.

On November 14, Mr. O'Kelly confronted the PIC and the claimant about the removal of the cameras and recording equipment, informing them that he had authorized their placement. He asked for the return of the property so it could be delivered to the employer's Des Moines, Iowa office. The claimant responded that it was too late, that it had been destroyed. The PIC interjected and stated that no, the equipment had not been destroyed, that it could be retrieved; the PIC volunteered to deliver the property to the Des Moines office when he was going for a meeting on November 15. The claimant retrieved the remains of the recording equipment, which was then delivered to the employer's Des Moines office.

Upon discovering that the hard drive of the recording equipment had been destroyed, the employer confronted the claimant. Concluding that she had destroyed the hard drive after learning that it belonged to the employer and that it would be turned over for examination, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is

misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the conclusion that the claimant destroyed the recording device hard drive after learning that it was the employer's property and that the employer required it to be returned. However, the administrative law judge has concluded that the claimant destroyed the hard drive before learning on November 14, 2005 that it belonged to the employer; this conclusion is corroborated by the testimony of Mr. O'Kelly that the first thing the claimant said on November 14 was that it was too late, that it had been destroyed – it was only the second-hand statement of the PIC that it in fact had not yet been destroyed. The employer has stipulated that it does not fault the claimant for her actions regarding the cameras and recording device prior to learning that they were the employer's property, and that the only basis for her discharge was her supposed destruction of the property after being informed of its ownership. Therefore, the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 30, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/pjs