

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY W CANTRELL**  
Claimant

**APPEAL NO. 09A-UI-08762-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 05/10/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated June 12, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 29, 2009. The claimant participated. The employer participated by Nick Sorensen, seafood manager; Duane Ash, store director; and Brett Kramer, meat market manager. The employer was represented by Kenneth Carp, attorney at law. The record consists of the testimony of Nick Sorensen, the testimony of Duane Ash, the testimony of Brett Kramer, the testimony of Randy Cantrell, and Employer's Exhibits 1 and 2.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a part-time meat clerk for a Hy-Vee store located in Davenport, Iowa. He was initially hired on June 20, 2008. On July 10, 2009, the claimant got some food from the salad bar and did not pay for it. He was warned that if he again took food without paying for it, that he would be terminated.

This Hy-Vee store offered a promotion on Tuesdays that allowed customers to get certain items for free if \$10.00 in groceries was purchased. These items were for sale and if an item was not purchased or given out as part of the promotion, that item was put back in inventory. While the claimant was on duty, he took a piece of cake that was part of the promotion. He did not purchase \$10.00 in groceries at the time he took the cake.

The empty cake container was discovered in the meat locker. Nick Sorensen spoke to the claimant about it the next day and the claimant admitted that he took the cake and ate it. The claimant was sent home. The decision was then made to terminate the claimant for theft of store property. The claimant was notified about his termination in a meeting on April 16, 2009.

## REASONING AND CONCLUSIONS OF 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there is a material breach of the worker's duty to the employer. In this case, the claimant was discharged for theft. The claimant took a piece of cake that was part of a store promotion. The claimant was only entitled to take the cake if he purchased \$10.00 in groceries. The claimant admitted that he had not purchased the groceries before he took the cake. He claims that he purchased the groceries after he took the cake and after he was off duty.

The claimant knew that it was against store policy to take food without paying for it. The claimant had taken some food from the salad bar without paying for it. The claimant's explanation for this incident was that he had waited for someone to take his money and then had gone ahead to eat the food because he was on his break. He then forgot to pay on the way out. The employer warned the claimant that if he again took food without paying for it, he would be terminated. The claimant knew that his job was in jeopardy should a similar incident occur in the future.

The evidence established that the claimant again took food without paying for it. The claimant knew that he was entitled to the cake only if he bought \$10.00 worth of groceries. He admitted that he did not actually buy the groceries until later. The claimant deliberately violated store policy by taking the cake. An employer can reasonably expect that an employee will not take

merchandise that has not been paid for. The claimant was warned once about this type of conduct and after the second incident was terminated. Benefits are denied.

**DECISION:**

The representative's decision dated June 12, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw