

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINGER A MCNAMARA**  
Claimant

**APPEAL NO. 13A-UI-04566-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/24/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 8, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on August 5, 2013, in Cedar Rapids, Iowa. The claimant participated personally. The employer participated by Jeff Carter, Store Director; Cord West, Assistant Manager; Eugenia Claussen, Cashier; and Denise Johnson, Cashier. Rick Anderson, Pharmacist, was a witness for the claimant. The employer was represented by Paul Jahnke. The record consists of the testimony of Jeff Carter; the testimony of Cord West; the testimony of Eugenia Claussen; the testimony of Denise Johnson; the testimony of Ginger McNamara; the testimony of Rick Anderson; Claimant's Exhibit A; and Employer's Exhibits 1-10.

**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 employer is a retail grocery chain. The claimant was employed at the store located on First Avenue in Cedar Rapids, Iowa. The claimant was a full-time pharmacy technician. Her date of hire was August 31, 2010. Her last day of work was March 21, 2013. She was terminated on March 25, 2013.

The incident that led to the claimant's termination occurred on March 21, 2013. A customer in the pharmacy department got upset when she was told that a discount card did not cover the full cost of a prescription drug. The customer went to the customer service department to complain about what she believed was rudeness on the part of the claimant. The claimant left the pharmacy department to go to customer service to defend herself. The customer told the claimant that they should go outside to settle the matter. The claimant said that she would walk out with her. Cord West, the assistant manager who was trying to appease the customer, told

the claimant twice to go back to the pharmacy department. The claimant did go back to the pharmacy department after the second request.

The claimant came back to work on March 22, 2013, but was told to go home. She met with the store director, Jeff Carter, on March 25, 2013. Mr. Carter decided to terminate the claimant because it was "so ugly an event" that he could not have the claimant represent the employer. He felt it was improper for the claimant to have left the pharmacy department and address the customer.

## **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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was discharged because she got into a verbal altercation with a customer. The greater weight of the credible evidence showed that it was the customer who got angry with the claimant for no good reason. Particularly persuasive was the testimony of Rick Anderson, the pharmacist who was on duty at

the time. The customer was angry because a discount card she tried to use would not cover the full cost of a prescription that she was picking up. Both the claimant and the pharmacist tried to explain to the customer how the card worked. The customer then complained to customer service desk. The claimant may have made a poor judgment in coming out of the prescription area to get further involved in the dispute. But a single instance of poor judgment does not constitute misconduct. There was no evidence that the claimant herself used profanity or physically assaulted the customer. There was no evidence that the claimant had multiple complaints about poor customer service. The most reasonable inference from the evidence is that the claimant used poor judgment in an isolated instance. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 8, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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