

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORISSA E RANKIN
Claimant

APPEAL NO. 12O-UI-11844-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/03/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 28, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 8, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sabrina Bentler participated in the hearing on behalf of the employer with witnesses, Cindy Vashon, Casey Schwarting, and Sean Butterbaugh. Exhibits One through Three were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show (1) the claimant was paid \$2,318.00 working for Kum & Go after April 13, 2012, (2) her weekly benefit amount is \$169.00, and (3) she has not filed any weekly claims for benefits. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as a cashier for the employer from July 13, 2010, to April 13, 2012. The claimant was informed and understood that under the employer's work rules, purchase of merchandise required a paid receipt to be with the purchaser or attached to the item prior to use or consumption and theft of property was prohibited.

The claimant was scheduled work from 7:00 a.m. to 1:00 p.m. The claimant has high blood pressure for which she takes medication and needs to keep hydrated. Later in the morning, while the claimant was working at a cash register checking out customers, she began feeling nauseated and light-headed. She asked the assistant manager who was nearby whether she could be excused to get a drink of water. He declined her request so she went back to checking out customers. When she continued to feel nauseated and light-headed, she grabbed a small 50-cent bottle of water from a cooler at the end of the register and drank the water so she could continue to wait on customers. The assistant manager noticed the claimant drinking the water and asked if she had a receipt. The claimant replied that she had not had a chance to pay for

the water yet but she would do so. About a half hour later, when business at the register slowed down, the claimant took her break and purchased and got a receipt for the water.

After the claimant returned to work at the register, she was told go to the store manager's office. She was then informed that she was being terminated for employee theft for consuming the water before paying for it.

A short time after the claimant's employment with the employer ended, she took a job at Kum & Go, and was paid \$2,318.00 from that employment. She had actually put in two-week notice to take that job on about April 4, 2012.

After her separation from Kum & Go on June 3, 2012, the claimant filed a new claim for unemployment insurance benefits effective June 3, 2012. Her weekly benefit amount was determined to be \$169.00. Since filing the claim for benefits, the claimant had not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Although the claimant technically violated the work rule about consuming a product before paying for it, the circumstances surrounding the action have to be considered in deciding if disqualifying misconduct took place. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. First, I believe the claimant's testimony that she has high blood pressure and needs to keep hydrated to avoid light-headedness. Second, I believe she asked the assistant manager to be excused to get a drink of water, but her request was denied. Finally, I believe she took the water to address her health symptoms intending to pay for it and paid for it when she was able to leave the register to do so. No willful and substantial misconduct has been proven in this case.

Since the employer discharged the claimant based on her conduct, this overrides the fact that she would have quit to take other employment in about five days. The separation from employment on April 13, 2012, was the result of the employer discharging the claimant for reasons not amounting to misconduct. As a result, its account may be chargeable for benefits paid to the claimant based on this separation from employment. Iowa Code § 96.7-2-a(2).

In addition, even if the claimants' separation on April 13, 2012, was disqualifying, the claimant earned enough wages working for Kum & Go to lift the disqualification in any event since she earned well over ten times her weekly benefit amount.

Finally, the records show the claimant has not filed any weekly claim for benefits, which are required to receive any benefits. If the claimant is unemployed, she will need to contact the Agency to reopen her claim to receive any benefits in this case.

DECISION:

The unemployment insurance decision dated June 28, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css