

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA M JOHNSON
Claimant

APPEAL NO: 13-UI-01658-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 01/13/13
Claimant: Respondent (1)**

Iowa Code § 95.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's February 6, 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 reasons that did not constitute a current act of work-connected misconduct. The claimant participated in the hearing with her attorney, Joseph Glazebrook. Anna Marie Gonzalez, a representative with Corporate Cost Control, appeared on the employer's behalf. Abby Abma, a Kitchen Clerk, and Bea Cisler, the store director, testified on the employer's behalf.

During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008 as full-time kitchen assistant. When the claimant started her employment, she received a copy of the employer's policies. The policies in part informed her that that the fundamentals of employer's code of conduct included are honesty, integrity, ethics, and morals. Violation of any policy could result in an employee's termination. (Employer Exhibit Two.) The claimant understood the employer's verbal policy required employees to turn into management any gift card or anything of value that someone found and gave to an employee.

In late November a customer found a gift card on the floor and gave it to the claimant. The claimant told the customer she would take care of it. The claimant placed the gift card on her cash register and did not do anything with the gift card. (Employer Exhibit One.) When the gift card was turned in, the claimant was very busy. Later during her shift when she was not as

busy, she forgot to give gift card to a manager. The claimant left the gift card on the cash register.

In late November or early December, the customer who turned in the gift card asked the bakery manager if the owner of the gift card had been found. Security personnel told Cisler about the gift card. Security personnel asked Cisler not to say anything to the claimant because the gift card had been used. Security wanted to see if the person using the gift card could be identified. The employer did not find out who had been using the gift card.

The employer discharged the claimant on January 14, 2013. This was the first time the employer asked the claimant about the gift card a customer had turned in in late November. Even though the claimant's job was not in jeopardy prior to this incident, the employer concluded the claimant violated the employer's code of conduct when she did not turn in the gift card to her supervisor or a manager.

After the claimant had been discharged, she told a co-worker why she had been discharged. The co-worker understood the claimant had called the phone number on the gift card to find out the balance on the gift card. The claimant had not called to find out the balance on the gift card and did not use the gift card.

REASONING AND CONCLUSIONS OF LAW:

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

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The facts establish that by early December Cisler knew the claimant had not turned in a gift card to a manager after a customer found the gift card on the floor and gave it to the claimant. The

claimant's job was not in jeopardy before a customer turned in a gift card he had found on the employer's floor. Since the employer discharged the claimant for not following the employer's verbal policy to turn in all items of value to management and did not say anything to the claimant about this gift card until January 14, 2013, the employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. Waiting over a month to discharge the claimant for something that happened in late November does not establish a current act.

Also, even though the employer testified the card the customer turned in had been used; there is no evidence that the gift card the employer had been tracking was the same gift card a customer gave to the claimant in late November.

While the employer may have had business reasons for discharging the claimant, the evidence does not establish that she committed work-connected misconduct. She used poor judgment when she did not immediately give the gift card to management, but she did not intentionally fail to follow the employer's code of conduct. Also, the employer did not discharge the claimant for a current act. As of January 13, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's February 6, 2013 determination (reference 01) is affirmed. The employer discharged the claimant, but did not establish that she committed a current act of work-connected misconduct. As of January 13, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll