

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERIE L MURROW
Claimant

APPEAL NO. 09A-UI-06975-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated April 28, 2009, reference 01, which held that no disqualification would be imposed regarding Cherie Murrow's separation from employment. After due notice was issued, a hearing was held by telephone on June 2, 2009. Ms. Murrow participated personally. The employer participated by Gail Narber, Perishables Manager, and Jen Book, Director. Exhibits One through Seven were admitted on the employer's behalf. The employer was represented by Daniel Speir of Unemployment Insurance Services.

ISSUE:

At issue in this matter is whether Ms. Murrow was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Murrow was employed by Hy-Vee, Inc. from May 31, 2007 until April 6, 2009 as a full-time checker. She was discharged for giving an unauthorized discount to a customer on April 6.

A few days prior to April 6, Ms. Murrow notified the employer that there was a customer who was making her uncomfortable because she felt he was interested in her personally. She told the employer that this individual had called her home. She did not have a restraining order against the individual but had contacted her local police department to register a complaint. She was told she could not refuse to wait on the customer. Ms. Murrow was operating the register at the central pay station in the kitchen area on April 6 when this individual made a purchase.

Ms. Murrow entered what she believed to be the correct code for the customer's purchase. There are different multi-digit codes that cashiers enter that will automatically enter the price of the item being purchased. As it turned out, the code Ms. Murrow entered was the one to be used for employee purchases. Because she was flustered over the presence of this individual,

she did not catch her error and he received the benefit of the employee discount. Her conduct was considered to be a violation of store policy and, therefore, she was discharged on April 6, 2009. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Murrow was discharged because she gave an unauthorized discount to a customer. However, the administrative law judge does not believe she intended to give a discount. In most cases where an individual is attempting to abuse the discount policy, the discount is given to a friend or family member.

Ms. Murrow approached the employer about the customer at issue a few days before the date of the discount. There would be no reason for her to bring this customer's actions to the employer's attention unless there was some type of problem. It seems unlikely she would put the employer on notice of this customer if he was a friend. Since he was someone she was having a problem with, it seems unlikely she would intentionally give him an unauthorized discount. It is Ms. Murrow's prior notice to the employer that persuades the administrative law judge that she did not intentionally give a discount on April 6.

At most, Ms. Murrow was negligent in not making sure she entered the correct code. However, given her discomfort with the customer, her error is understandable. Moreover, an isolated instance of negligence is not sufficient to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 28, 2009, reference 01, is hereby affirmed. Ms. Murrow was discharged by Hy-Vee, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs