

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL M CROGHAN
Claimant

APPEAL NO. 09A-UI-15068-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 12/02/07
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Croghan filed an appeal from a representative's decision dated October 6, 2009, reference 01, which denied benefits based on his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on November 9, 2009. Mr. Croghan participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Croghan 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: Mr. Croghan was employed by Hy-Vee, Inc. from August 11 until September 7, 2009. He worked full-time as a checker and stocker. He was discharged for reporting to work after consuming alcohol.

Other employees reported that Mr. Croghan reported to work smelling of alcohol on August 25 and again on September 6. As a result, he was asked to come in and speak to management on September 7. He consumed four to five alcoholic drinks before meeting with management on September 7. He was drinking Black Velvet mixed with 7-Up. Because he reported to the meeting smelling of alcohol, he was discharged from the employment. He contacted the employer at a later date to try to get his job back but was not rehired.

Mr. Croghan acknowledged during the hearing that he had consumed alcohol before reporting for work on August 25 and September 6. He had undergone in-patient alcohol treatment approximately ten years ago and remained sober for nine years.

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). Mr. Croghan was discharged for reporting to work smelling of alcohol on three separate occasions. He believed he had stopped drinking early enough in the day that his work would not be affected by the alcohol he consumed during the day. Although his faculties may not have been impaired by alcohol when he reported to work, it is clear that he still smelled of alcohol.

Mr. Croghan worked in a grocery store where he would have contact with customers. It was clearly contrary to the employer's interests and standards to have customers faced with an employee who smelled of alcohol. Mr. Croghan even consumed several drinks when he knew he was going to meet with management on September 7. Given the fact that he had been sober for nine years after treatment, it must be concluded that he had the ability to refrain from drinking if he chose to. For the reasons cited herein, the administrative law judge concludes that Mr. Croghan's conduct in reporting to work smelling of alcohol constituted substantial misconduct. As such, benefits are denied.

DECISION:

The representative's decision dated October 6, 2009, reference 01, is hereby affirmed. Mr. Croghan was discharged by Hy-Vee, Inc. for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw