

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL A ARENDS
Claimant

APPEAL NO. 12A-UI-06590-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05-06-12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 29, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 25, 2012. The claimant did participate. The employer did participate through Scott Walters, store director; Sandy Berven, human resources manager; and Janna Chase, former floral designer, and was represented by Mary Rose Thatch of Corporate Cost Control.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cashier, floral designer, and scanner, full-time, beginning May 1, 2000, through May 10, 2012, when she was discharged. The claimant was assigned to work in the floral department on May 9. A customer approached the counter to place a flower order and the claimant said to the customer something along the lines that she was sick of waiting on customers and was not going to help her. Another employee, Janna Chase, overheard the entire conversation and helped the customer at the counter. The customer complained to store manager, who investigated. The claimant was interviewed and initially denied that she had made the comment, and then did admit that she may have said something like what was reported to the manager. The claimant was belligerent during her conversation with the manager and took no ownership about her comment or the attitude she expressed to customers. The witness to the event confirmed to the employer during their investigation and again at hearing that the claimant had made a comment to a customer that she was sick of customers and not going to help her. At hearing, the claimant admitted that she may have made something like the comment reported to the manager, but that she had her back turned on the customer when she made the comment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The Administrative Law Judge is persuaded that the claimant made a comment to a customer seeking assistance at the floral counter that she would not help her. The claimant's own bad mood or frustration does not justify her treatment of a customer. It was the customer who made the complaint to the manager. The Administrative Law Judge does not believe that the customer and Ms. Chase would conspire to lie about the claimant's treatment of the customer. The claimant's own behavior was confirmed by an eyewitness who reported essentially the same facts as the complaining customer. The claimant's refusal to wait on a customer is clearly conduct not in the employer's best interest and, in this case, does rise to the level of substantial misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The May 29, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw