

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J UGARPH
Claimant

APPEAL NO. 13A-UI-07908-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/09/13
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Cynthia Ugarph filed a timely appeal from the June 28, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 6, 2013. Ms. Ugarph provided a telephone number for the hearing, but was not available at that number at the time of the hearing and did not participate. Julia Day of Corporate Cost Control represented the employer and presented testimony through Amber Hawks and Chris DeSaulniers. Exhibits One through Six were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed by Hy-Vee as a part-time pharmacy clerk until June 5, 2013, when the employer discharged her for multiple violations of store policy in connection with a single incident. On May 31, 2013, Ms. Ugarph told a supervisor of her desire to take advantage of Hy-Vee fuel savings program whereby customers could purchase certain items and receive a discount on gasoline. The supervisor provided Ms. Ugarph with instructions on how she could take the necessary steps to qualify for the fuel savings. Instead of following those instructions, Ms. Ugarph entered the fuel savings into the cash register, giving herself the gasoline discount. Ms. Ugarph knew that the employer's policies prohibited her from ringing up her own transactions. To give herself the discount, Ms. Ugarph made unauthorized use of an override key that had been provided to her for other purposes. Ms. Ugarph entered the unauthorized discount twice, giving herself a 50-cent per gallon discount on gasoline. Ms. Ugarph purchased gasoline from Hy-Vee with the unauthorized double discount. Ms. Ugarph did not report any of this to the employer. The employer discharged Ms. Ugarph from the employment after the employer discovered the conduct.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s) alone. The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes Ms. Ugarph was discharged for misconduct in connection with the employment. Ms. Ugarph knowingly and intentionally violated the instructions of the supervisor and multiple Hy-Vee policies in order to give herself an unauthorized discount on gasoline. Ms. Ugarph's conduct was in willful and wanton disregard of the interests of the employer. Ms. Ugarph is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representative's June 28, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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