

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ASHLY L MUSTARD
109 N 15TH ST
ESTHERVILLE IA 51334

HY-VEE INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 06A-UI-01536-CT
OC: 01/08/06 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ashly Mustard filed an appeal from a representative's decision dated January 30, 2006, reference 01, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on February 27, 2006. Ms. Mustard participated personally. The employer participated by Mary Fuhrman, Store Director, and Karen Bradley, Cook. Exhibit One was admitted on the employer's behalf. The employer was represented by David Williams of TALX UC eXpress.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mustard was employed by Hy-Vee, Inc. from

March 9, 2005 until January 10, 2006, as a part-time kitchen clerk. She was discharged based on an allegation that she allowed a family member to have the benefit of her employee discount and that she rang up a sale to herself.

As an employee, Ms. Mustard was to be charged only \$4.00 for a meal. On January 10, her cousin visited her at the store. Ms. Mustard prepared a plate of food for each of them. Two slices of turkey and two side dishes were split between the two plates. The employer confirmed that Ms. Mustard did not take more food than would be allowed for one meal. The food was then taken to the dining room. Afterwards, Ms. Mustard had another employee ring up the sale and paid \$4.00. The employer believed she had violated store policies and, therefore, she was discharged on January 10. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mustard was separated from employment for any disqualifying reason. 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). The employer alleged that Ms. Mustard violated store policy by allowing her cousin to have the benefit of her store discount. She did not allow her cousin to purchase a separate meal using her discount. In essence, Ms. Mustard purchased her own meal and shared it with her cousin. The employer confirmed that only one meal was consumed. For the above reasons, it is concluded that Ms. Mustard did not allow another person to use her store discount.

The employer also alleged that Ms. Mustard violated store policy by ringing up a sale to herself. The testimony at the hearing confirmed that the cook rang up the meal on January 10. The evidence of record failed to establish that Ms. Mustard violated any Hy-Vee policy on January 10 or on any other date. Inasmuch as no act of misconduct has been established, no disqualification is imposed.

DECISION:

The representative's decision dated January 30, 2006, reference 01, is hereby reversed. Ms. Mustard was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw