

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS TILL
Claimant

APPEAL NO. 11A-UI-07076-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/24/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Till filed an appeal from a representative's decision dated May 17, 2011, 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 June 23, 2011. Mr. Till participated personally. The employer participated by Christa Kalb, human resources manager; Abbie Olson, store director; and Mark Kasemeier, perishables manager. The employer was represented by Alice Thatch of Corporate Cost Control.

ISSUE:

At issue in this matter is whether Mr. Till 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. Till was employed by Hy-Vee, Inc. from December 6, 2000 until April 25, 2011 as a full-time baker. The employer has a policy, of which he was aware, that prohibits employees from consuming merchandise without first making payment. Mr. Till was discharged because he violated the policy.

Mr. Till reported to work at 2:00 a.m. on April 25, 2011. At approximately 5:30 a.m., he removed a cream puff from the bakery case and consumed it in the bakery. Although there was one register open in the store, he did not pay for the item before eating it. Only one other employee was on duty in the bakery at the time the cream puff was consumed, but two others arrived at 6:00 a.m. The bakery manager usually arrives at the store at 7:00 a.m. Approximately ten minutes before the end of his shift, the employer questioned Mr. Till about the cream puff and he acknowledged eating it without paying for it. He told the employer he ate it as a "quality check." Such checks are to be done only at the direction of the bakery manager.

Between the time he ate the cream puff and when he was approached by management shortly before the end of his shift, Mr. Till had not made any effort to pay for the cream puff. He did not ask a coworker to cover his duties while he paid for the cream puff. He did not contact the

bakery manager so that he could take a break and pay for the item. He had been instructed in the past to contact the bakery manager if he found himself unable to take his allowed 30-minute break. The above matter was the sole reason for Mr. Till's April 25, 2011 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). Mr. Till was discharged after he violated the employer's policy that required merchandise to be paid for prior to consumption. Although he later paid for the item, the fact remains that he did not make payment before eating it.

The administrative law judge appreciates that Mr. Till may have felt unable to get away from the bakery to make payment immediately when he took the cream puff. This might be a different case if he had made some attempt at payment after additional staff arrived in the bakery and before being confronted by the employer. However, he did not do so. It was his choice to take the item knowing he did not have time to go to a register to pay for it before eating it. Moreover, he told the employer he ate the item as a "quality check," which was contrary to what he testified to as his intentions. His actions constituted theft, which is clearly contrary to the type of behavior the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated May 17, 2011, reference 01, is hereby affirmed. Mr. Till was discharged 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