

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY C PATTEN
Claimant

APPEAL NO: 12A-UI-01976-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/15/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 17, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Alice Rose Thatch represented the employer. Brian Brunsen, Chad Lauderville, and Stacey Sassman appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 1995. He worked as a part-time maintenance employee. The employer's policy informs employees that all products an employee eats at work must be paid for before eating it. Employer Exhibit One. The employer has zero tolerance for taking product, any amount, without paying for it.

About a month before the claimant's employment ended, the employer discovered wrappers and canisters of nuts and potato chips in a back room on the supply deck in an area that was hidden from view. On December 26, 2011, the employer set up a motion activated camera to find out who went to this area.

On January 4, 2012, the employer reviewed the camera footage. The only person on the camera was the claimant who was eating food. Before talking to the claimant, the employer pulled up transactions around the dates the claimant was seen eating certain food. The employer did not find transactions to establish he paid for food he ate.

The employer talked to the claimant on January 9 and told him about the camera. The claimant admitted he ate food in this area. Even though the employer has a refrigerator in the break room, the claimant indicated he put his food in this area because it was cool. When the employer asked him to provide receipts for the food he ate, the claimant told the employer he did not have any receipts for the food he ate. After the employer told the claimant that the computer records did not establish that he had paid for the food items, the claimant made a remark that maybe he had not paid for them.

Based on the employer's zero tolerance for stealing – the employer told the claimant he could resign or the employer would discharge him. The claimant signed a form indicating he resigned on January 9, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The option of resigning or being discharged does not establish that a claimant voluntarily quits. If the claimant had not resigned, the employer would have discharged him. Under these facts, the evidence establishes the employer initiated the employment separation. The employer discharged the claimant on January 9, 2012.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's assertion that he bought the food he ate at another store is not credible. If the claimant had purchased the food at another store, it would have made sense for him to say that on January 9. He did not say this on January 9. Instead, the first time this possibility was raised was during the fact-finding interview and the fact finder mentioned this as a possibility. Given that the claimant did not say he purchased food at another store and he ate in a hidden area, the evidence indicates the claimant ate food from the employer's store without paying for it. The claimant knowingly violated the employer's policy. The employer discharged him for reasons constituting work-connected misconduct. As of January 15, 2012, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since January 15, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's February 17, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 15, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue

of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css