

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIDNEY A HILL
Claimant

APPEAL NO. 09A-UI-11305-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 07/05/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sidney Hill filed an appeal from a representative's decision dated July 29, 2009, 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 August 24, 2009. Mr. Hill participated personally. The employer participated by Pat Ohlerking, Store Director; Jeff Van Landuyt, Assistant Night Stock Manager; Jerry Better, Assistant Manager; and Al Guerdet, General Merchandise Manager. Exhibits One and Two were admitted on the employer's behalf. The employer was represented by Tim Speir of Unemployment Insurance Services.

ISSUE:

At issue in this matter is whether Mr. Hill 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. Hill was employed by Hy-Vee, Inc. from September 13, 2008 until April 13, 2009. He worked part-time as a night stocker. He was discharged for attempted theft.

Approximately two hours before the end of his shift on April 12, Mr. Hill was observed removing roses from the floral department and placing them near his register. At the end of his shift, he exited the store with the roses. When he was stopped and asked if he had a receipt, he indicated he had thrown it away. He was asked who rang up the purchase and he indicated he had rung it up himself. The employer reviewed the detail tape from his register and could not find any purchases from the floral department, nor could the employer locate a purchase amount that coincided with the price of the roses.

Mr. Hill was allowed to take the roses, valued at approximately \$3.00 plus tax, after making appropriate payment. He was notified of his discharge the following day. The above matter was the sole reason for the 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). The administrative law judge is persuaded that Mr. Hill did, in fact, intend to remove the roses on April 12 without making payment. He knew he could not remove product from the store without first making payment. His contention that he had not left the store with the roses when he was stopped is not well-taken. He had gone beyond the registers where he could make payment and had exited through at least one set of doors.

In addition to his attempted theft, Mr. Hill was also dishonest with the employer when initially questioned about the roses. He told the employer he had rung himself up but threw away the receipt. During the hearing, he indicated he admitted that the roses had not been paid for. However, it seems unlikely the employer would search his register's detail tape for evidence of the purchase if Mr. Hill had acknowledged they had not been paid for.

Theft or attempted theft from one's employer is clearly contrary to the type of behavior an employer has the right to expect. For the reasons stated herein, Mr. Hill is denied job insurance benefits.

DECISION:

The representative's decision dated July 29, 2009, reference 01, is hereby affirmed. Mr. Hill was discharged for misconduct in connection with his employment. Benefits are withheld 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