

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE J TROUT
Claimant

APPEAL NO. 11A-EUCU-00790-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/11/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed a timely appeal from an unemployment insurance decision dated October 19, 2011, reference 02, that allowed benefits to Connie J. Trout. After due notice was issued, a telephone hearing was held November 22, 2011. Ms. Trout did not provide a telephone number at which she could be contacted. Pharmacy Manager Mike Conrey and Store Operations Manager Kyle Greenleaf testified for the employer, which was represented by Paula Mack of Corporate Cost Control. Employer Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Connie J. Trout was employed by Hy-Vee, Inc. from November 3, 2008, until she was discharged September 10, 2011. She worked as a pharmacy technician. On August 28, 2010, a customer complained that he had been shorted several hydrocodone tablets when he had picked up an order the previous day. Connie Trout waited on the customer. Pharmacy Manager Mike Conrey began a second inventory tracking the dispensing of the medication. He later mentioned to pharmacy staff that an unnamed customer had complained about being shorted. Ms. Trout mentioned the name of the customer although Mr. Conrey had not disclosed it. Following this, there were several occasions in which the count of hydrocodone tablets was short after Ms. Trout's shifts. Mr. Conrey had informed Store Operations Manager Kyle Greenleaf, as well as the district pharmacy manager and safety and security team, of his investigation. When Mr. Greenleaf discharged Ms. Trout on September 10, 2011, Ms. Trout stated that her physician had prescribed hydrocodone for her but that she had not taken the pills from the pharmacy.

Ms. Trout has received unemployment insurance benefits since this separation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Much of the employer's evidence is circumstantial. Nonetheless, the evidence is consistent and has not been contradicted by any evidence from the claimant. The administrative law judge concludes from the evidence that the claimant was discharged for misconduct. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 19, 2011, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw