

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M BOILEAU
Claimant

APPEAL NO: 09A-UI-04353-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/22/09
Claimant: Respondent (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's March 12, 2009 decision (reference 01) that concluded Jessica M. Boileua (claimant) was qualified to receive benefits and the employer's account as subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2009. The claimant did not respond to the hearing notice and did not participate in the hearing. Mike Haaf, the personnel director, testified on the employer's behalf. Tim Speir, a TALX representative, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant completed an application for employment on May 19, 2008. The employment application informed applicants that any false or misleading information on the application could result in an employee's discharge. (Employer Exhibit Two.) On the application, the claimant indicated she had not been convicted of a crime other than a traffic violation. (Employer Exhibit Two.)

The claimant started working for the employer on May 23, 2008. The claimant worked as a part-time kitchen clerk. When the claimant was assigned to work at the Law Enforcement Academy, the employer had to do a background check. On February 23, 2009, the employer learned the claimant had been convicted of tampering with an automobile on January 4, 2008. The claimant had initially been charged with burglary in the third degree. As the result of a negotiated plea, the claimant voluntarily pled guilty to the tampering with a motor vehicle charge. (Employer Exhibit One.)

After the employer learned about the claimant's January 2008 plea, the employer concluded the claimant intentionally misrepresented her record when she completed the employment application. The claimant told the employer she had not answered yes on the employment application form because the initial charge of burglary had been dropped and she pled guilty to a misdemeanor.

On February 24, 2009, the employer discharged the claimant because she had not been truthful about convictions she had before she began working for the employer. If the claimant had been truthful, the employer may not have hired her.

The claimant established a claim for benefits during the week of February 22, 2009. The claimant has not received any unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 facts establish the claimant did not accurately complete her employment application even though the application informed her that if she was not truthful and employer found out, she could be discharged. Even though the initial charge was dismissed, the claimant still pled guilty to a misdemeanor which is not the same as a traffic citation. Without any explanation from the claimant, the facts indicate the claimant initially misrepresented her prior record so the employer would hire her. For unemployment insurance purposes, the employer discharged the claimant for work-connected misconduct. As of February 22, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 12, 2009 decision (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 February 22, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs