

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ISACC KIRKLAND**  
Claimant

**APPEAL NO: 12A-UI-00536-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/11/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 5, 2012, reference 01, that held he was discharged for misconduct on December 8, 2011, and which denied benefits. A telephone hearing was held on February 29, 2012. The claimant participated and was represented by Chris Kragnes, attorney at law. Paul Jahnke, representative; Rod Burns, store director; and Dave Kozak, loss prevention specialist, participated for the employer. Employer Exhibits 1, 2, and 3 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on December 16, 2003, and quit employment at a Missouri location on March 21, 2010. He was re-hired on March 29, 2010, and last worked as a night stock manager on December 8, 2011. The claimant received an employee handbook that contained the policies of the employer. Employees are allowed to a reduced price purchase of discounted merchandise, but the employer did not offer it as evidence for this hearing.

On December 1, employer loss prevention notified the store director that night stock employees were buying store items at substantially reduced prices, such as 50 cents or a dollar. On December 3, the director confronted claimant what he knew about it and claimant denied knowledge of their discounting practice.

On December 8, loss prevention and the store director separately questioned night stock employees who it identified in security video photographs making discounted purchases. The employees stated claimant had authorized discounted purchases. The employer confronted claimant after interviewing the employees. Claimant admitted he knew about the discounted purchasing and he failed to report it to management because he believed there was no issue.

He offered that the previous night manager who he worked under had authorized a 50 percent discount on damaged merchandise, and that was the continuing practice in the store.

The security video shows two night stock employees purchasing several merchandise items for 50 cents or one or two dollars per item. The night cash register person did not scan the items but did ring up the sale at the reduced rate. The claimant was not present at any transaction nor did he authorize the register person to ring up any sale.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes employer has failed to establish claimant was discharged for misconduct in connection with employment on December 8, 2011, for violation of company policy.

The employer offered hearsay testimony that night stock employees had been authorized by claimant to make discounted merchandise purchases. The employer did not offer them as witnesses or witness statements. Although employees are permitted to purchase damaged items at discount, it was not as "deep" or to the level as the items purchased at 50 cents or a dollar or two dollars. While claimant might have admitted advising his employees of the discounted purchasing practice, he never admitted to the employer authorizing employee discounts at the level of 50 cents or a dollar.

The employer also failed to offer a written employee discount merchandise policy that would establish how it would determine whether merchandise was qualified as damaged, who was authorized to make that determination, and whether it needed approval when presented to a cashier for purchase. It is apparent that what the employer describes as policy is more like a store "practice." There is no evidence the items purchased as shown in Exhibit #3 photos was authorized by claimant in any manner. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated January 5, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on December 8, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw