

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET A ADAMS
Claimant

APPEAL NO: 10A-UI-14888-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/26/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 22, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Kurt Drozd represented the employer. Jason Mikesell and Jay Moeller testified on the employer's behalf. Linda Threlkeld observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 1999. She worked as a full-time software program analyst. For the first ten years of her employment, the claimant's performance was up and down. Sometimes she completed her work satisfactorily and sometimes she did not. For the last two years, the employer started noticing consistent problems with the claimant's job performance. In March 2010, the employer talked to the claimant about her performance after noticing that she was not paying attention to her job. Instead of performing her job, the employer discovered she spent time printing off coupons, sending instant messages and talking on her cell phone frequently. The claimant admitted she had been doing all the above. After the employer talked to her about her failure to concentrate on her work, the instant messaging was taken off the claimant's computer. The claimant stopped printing off coupons at work and did not use her cell phone at work except when she was on her break.

When the claimant's work performance still did not improve, the employer put her on a 90-day performance improvement plan on July 10. The claimant understood she needed to make significant improvements in her work performance or she would not have a job. The employer met with the claimant every two weeks and then every week to discuss issues she had and tried to address questions she had so she could perform satisfactory work.

After implementing the 90-day work performance improvement plan, the claimant did not make significant improvement in her work performance. The last projects the employer assigned to her could have been completed satisfactorily by a new employee, or one with no work experience. The work the claimant turned in for this project had not been completed correctly and she did not turn it in on time. The employer discovered numerous coding errors and noticed the claimant used the complier numerous times. The employer concluded that the claimant's frequent use of the complier meant she relied on this program to do her work instead of doing it herself. Although the claimant had questions when she worked on the assignment, she did not ask anyone even in the weekly meetings she had with the employer. Based on the repeated errors the claimant made on projects entry-level employees could have satisfactorily completed and the number of errors the claimant had, the employer discharged her on October 1, 2010.

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).

Even though the claimant asserted she had been diagnosed with adult attention deficit disorder, the facts do not establish that she advised the employer of this diagnosis before she was discharged or that her doctor gave her any work restrictions. Given the number of repeated mistakes the claimant made since July when she was put on a work performance improvement plan, the kind of mistakes she made and her reluctance or failure to ask the employer questions during bi-weekly and then weekly meetings indicate the claimant was negligent to the extent that she committed work-connected misconduct. Therefore, as of September 26, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 22, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2010. 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