

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI LYONS
Claimant

APPEAL NO: 15A-UI-01456-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/13/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 29, 2015, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 27, 2015. The claimant participated in the hearing. Jim Carney, Store Director; Eliza Cole, Human Resources Manager; and Aaron Heyer, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time second assistant manager for Hy-Vee from May 20, 2014 to January 8, 2015. She was discharged for providing false information on her employment application.

On January 5, 2015, a customer was chatting with Human Resources Manager Eliza Cole when she saw the claimant working at the store and commented she was surprised the employer hired the claimant given her previous criminal and prison records for drug-related offenses. On January 6, 2015, Ms. Cole notified Store Director Jim Carney about the situation and they went on Iowa Courts Online to view the claimant's criminal record. They found several convictions, including felony convictions for a third offense OWI in 2001, possession of materials to manufacture methamphetamine in 2005, and manufacturing methamphetamine in 2006.

The claimant completed her employment application online. The employer's store employment application asks, "Have you even been convicted of a crime other than a traffic violation?" and the claimant checked the box marked "no" (Employer's Exhibit Two). The employer also has an online application that is considered regional in nature with a question about previous criminal convictions on the first page that states, "Have you ever been convicted of a crime other than a traffic violation? Applicants for employment in Illinois should not respond "yes" to this question

for convictions which have been expunged, sealed or impounded, or which have been dismissed following completion of supervision requirements. Applicants for employment in Minnesota and Columbia, Missouri, should not respond to this question" (Employer's Exhibit One). The claimant checked the box marked "No" (Employer's Exhibit One).

The employer met with the claimant January 8, 2015, to ask about her criminal history. It told her that on her application she answered "no" to the questions about whether she had any criminal convictions other than traffic violations. Store Manager Jim Carney told the claimant, "I'm going to ask you right now. Have you ever been convicted of a crime other than a traffic violation?" and the claimant said, "Well, yes." The claimant proceeded to tell the employer about her felony convictions as well as some of her misdemeanor convictions. She told the employer she did not believe she had to list those convictions because she believed the instructions to Illinois, Minnesota and Columbia, Missouri, residents applied to her as well and she had been discharged from parole and probation at the time she completed her application. Because the claimant had felonies and misdemeanors on her record and failed to disclose those on her employment application, the employer determined she falsified her application and terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

While the claimant argues she believed she did not have to divulge her previous criminal convictions on her employment application because of the language stating Illinois, Minnesota and Columbia, Missouri, residents did not have to answer that question, her reasoning is not persuasive. A reasonable person's reading of the questions on the application would not lead to the conclusion an Iowa resident did not have to answer the question regarding criminal convictions. Additionally, she clearly checked the "no" box on the local store application that simply asks, "Have you ever been convicted of a crime other than a traffic violation?"

The administrative law judge is sympathetic to the claimant's plight and understands it is very difficult for convicted felons to secure employment once released from the legal system and the temptation not to disclose a previous criminal record, especially when the last incident occurred nine years ago, on an employment application must be great. Although it is possible, but not likely, the claimant extrapolated from the regional application she did not have to answer yes to the criminal conviction question because she has been discharged from parole and probation, the local store application question about previous criminal convictions is quite clear and straightforward, and does not mention any other state's residents responsibilities, and the claimant still answered that question "no" as well. The administrative law judge must conclude the claimant falsified her application for employment with this employer.

The claimant worked for the employer for nine months before the termination occurred which raises the question of whether the claimant's falsification of her application was a current act of employment. The administrative law judge finds that it was. At the time of the claimant's hire the employer did not conduct background checks on applicants it planned to hire but relied on the truthfulness of the applicant. Consequently, the first time it became aware of the claimant's criminal background was when the customer mentioned it to Ms. Cole January 5, 2015. The employer took immediate steps to further investigate the situation and acted swiftly in taking action to discharge the claimant once it learned of her criminal background and that she had not been forthcoming on her application. Given these facts, this situation must be considered a current act of misconduct.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 29, 2015, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs