

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEANA M SMITH**  
Claimant

**APPEAL NO. 08A-UI-05066-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/27/08 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated May 20, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on June 10, 2008. The claimant participated. The employer participated by Derek Holland, representative, and witnesses Tad Gallagher, store manager, and Terry Ellingboe.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for a current act of misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 2005 until April 26, 2008, when she was discharged for failing to report for scheduled work due to circumstances beyond her control. Ms. Smith held the position of part-time pay station clerk and was paid by the hour.

During the course of her employment with Hy-Vee, Inc., Ms. Smith had a poor attendance and punctuality record. The claimant was warned by the employer that her attendance and punctuality were unacceptable and that further attendance violations could result in her termination from employment. After being warned, the claimant attempted to improve her punctuality and attendance.

Ms. Smith was discharged when she failed to report for scheduled work Saturday, April 26, 2008, after becoming stranded in Burlington, Iowa, due to transportation problems. The claimant had notified the employer of her impending absence and had attempted to the best of her ability to secure alternate transportation so that she could report for work. The claimant was unable to find alternate transportation. The claimant had temporarily gone to Burlington, Iowa, because of a legal matter.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant's final attendance infraction was due to intentional disqualifying misconduct. It was not.

The evidence in the record establishes that although Ms. Smith's previous attendance and punctuality record was not good, the claimant had attempted to improve her attendance and punctuality after being warned by Hy-Vee, Inc. The claimant's discharge took place based upon the claimant's inability to report for scheduled work on Saturday, April 26, 2008, due to factors beyond the claimant's control. The claimant had traveled to Burlington, Iowa, with another individual for the purpose of taking care of some legal business and was unable to report to work when the vehicle in which they were riding became unexpectedly disabled. The evidence established that the claimant provided notice to the employer of her inability to report for work and the evidence establishes that the claimant had taken reasonable steps to secure alternative transportation but was unable to do so.

In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof in this matter. Misconduct must be substantial in order to justify denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in this case establishes that the claimant had improved her attendance and punctuality and that the claimant did not anticipate that she would be unable to report for scheduled work on April 26, 2008, but was unable to do so due to factors beyond her control. The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's final act that resulted in her termination was not due to intentional disqualifying misconduct. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated May 20, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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