IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER ROCKEY
Claimant

HY-VEE INC
Employer

APPEAL NO: 12A-UI-02786-BT

ADMINISTRATIVE LAW JUDGE
AMENDED DECISION

OC: 01/29/12
Claimant: Appellant (2)

Iowa Code § 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer Rockey (claimant) appealed an unemployment insurance decision dated March 7, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2012. The claimant participated in the hearing. The employer participated through Wes Brommel, Human Resources Manager and Sabrina Bentler, Employer Representative. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time bakery clerk from May 31, 2011 through January 27, 2012 when she was discharged for falsifying her employment application. She filled out an employment application on-line on March 13, 2011 which asked whether she had ever been employed by Hy-Vee, Inc. and the claimant checked no. However, she had worked for Hy-Vee in both Osceola and Corydon. Subsequent to completing the application, the claimant worked at the Hy-Vee Des Moines Number Four store beginning March 19, 2011. She was hired for what she believed to be full-time hours but was only given part-time hours so she quit without notice. The claimant applied and was hired at the Hy-Vee West Des Moines Number One store on April 5, 2011. She began working there but was discharged on April 20, 2011 because she failed to disclose that she worked at the Des Moines Number Four store.

Wes Brommel from the Des Moines Number Five store called the claimant and offered her an interview on May 31, 2011. Mr. Brommel completed an application review with the claimant and he said she forgot to list that she worked at Osceola so he had her write in that information.

She also filled out an employee information sheet on May 31, 2011 documenting that she was a former employee at Osceola from December 2006 through July 2008. The claimant testified that she told Mr. Brommel that she had worked for Hy-Vee in two different locations since applying and wanted to provide accurate information so she was going to take that part home to provide to him later but forgot to do so. Mr. Brommel does not remember anything about this. The claimant testified that she did not have a name badge so had to wear her old one from a different store. She said that Mr. Brommel and others were aware of that.

The claimant requested a print out of the wage verification report and an employee data form was printed at 1:58 p.m. on December 21, 2011. This form confirmed that the claimant worked at the Hy-Vee store in Osceola only in 2006 and in the Corydon store in 2008. The records also show the claimant worked and voluntarily quit without notice at the Des Moines Number Four store and that she was subsequently discharged from the West Des Moines Number One store for falsifying records. The employer discharged the claimant on January 27, 2012 for falsifying her employment application and company records.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for providing false information on her employment application. When a person willfully and deliberately makes a false statement on an employment application, such falsification shall be an act of misconduct in connection with the employer. The statement need not be written and an omission of a pertinent fact would have the same effect. The falsification must be such that it does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy. 871 IAC 24.32(6).

The Iowa Supreme Court has stated that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. *Larson v. Employment Appeal Board*, 474 N.W.2d 570, 571 (Iowa 1991). While this statement is *dicta* since the court ultimately decided Larson was discharged for incompetence not her deceit on her application, the reasoning is persuasive. The court does not define materiality but cites *Independent School Dist. v. Hansen*, 412 N.W.2d 320, 323 (Minn. App. 1987), which states a misrepresentation is not material if a truthful answer would not have prevented the person from being hired.

In the case herein, the evidence does not establish that the claimant's falsification would or could result in endangering the health, safety or morals of the claimant or others, nor does it expose the employer to legal liabilities or penalties. Additionally, while the employer would not have hired her if she would have provided a truthful answer at the time of hire, the misrepresentation is not materially related to job performance.

The final issue that must be addressed is why the discharge occurred over a month after the wage verification form was printed. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988). The discharge does appear to be a past act but the employer has also failed to establish disqualifying misconduct resulting from her falsification of the employment application. The employer has not met its burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated March 7, 2012, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

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