

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LACEY STRUBLE
Claimant

APPEAL NO: 13A-UI-11714-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 10, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2013. The claimant participated in the hearing with her mother/witness Venetta Struble. Tim McCracken, Human Resources Manager; Chad Bulman, Manager of Perishables; and Ajah Anderson, Employer's Representative; participated in the hearing on behalf of the employer.

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 bakery cake decorator for Hy-Vee from October 10, 2006 to September 23, 2013. The claimant was discharged for discounting items without a manager's approval and then giving an improper discount to a family member.

On September 13, 2013, the claimant's mother came into the store where the claimant was working in the bakery. Her mom had prepared a cake for a special occasion and the claimant was going to frost and decorate it at home. She provided her mother with a cake box, two containers of frosting and about four palm tree decorations the bakery sometimes throws in when customers purchase a cake or are going to decorate one of the cakes purchased at the employer's bakery. The employer charges the public \$4.00 for one pound of frosting. The claimant placed approximately one and one quarter pounds of frosting in the box with the four plastic palm tree decorations and printed a tag for \$5.00.

The claimant's mother went through a checkout lane at the front of the store and as she did so Manager of Store Operations Brad Albers, who was bagging the groceries, did not see a bakery tag on the box. After the claimant's mom passed through the checkout lane, Mr. Albers instructed Human Resources Manager Tim McCracken to follow the claimant's mother outside to see if there was anything in the cake box. Mr. McCracken approached the claimant's mother,

said "hello," and proceeded to look at the bakery cake box. He did not tell the claimant's mom what he was doing and did not open the box or do any further checking on the situation besides observing what he was able to see the bakery box in the cart. He noticed the frosting and palm trees and reported what he saw to Mr. Albers. They then went to the electronic journal to pull up the receipt involved in the transaction in question, and found it, but there were no bakery purchases on the receipt. Consequently, the employer decided to meet with the claimant when she reported for work the following day.

On September 13, 2013, the employer met with the claimant and asked her what was in the cake box. She told them there was frosting and plastic palm trees. The employer asked her the price of the items and the claimant stated she priced the frosting at \$5.00 because it was \$4.00 per pound and she had given her mother two containers of frosting weighing approximately one and one-quarter pounds. The employer told the claimant the items were never paid for and notified her that she was suspended until the store director returned.

The claimant was shocked and drove immediately to her parent's home where she told her mother what happened. She explained that the employer accused her of not tagging the bakery box and her mother stated it had been tagged and went through the garbage to find the box with the tag still on it. She took it to the store to show the employer, who asked to keep it, but the claimant's mother said no because that was the only proof she and the claimant had that the box had been tagged.

The employer next met with the claimant September 23, 2013, at which time it terminated her employment for giving a family member an improper discount as that also caused a lack of trust of the part of the employer toward the claimant going forward.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 did not give her mother an unauthorized discount. The employer could not offer any evidence convincingly contradicting the claimant or her mother's testimony. The employer first believed she did not charge her mother at all but after her mother produced the tag from the bakery cake box it stated she should have charged more money for the frosting. The claimant, however, credibly testified the bakery employees never weigh the frosting but rather just put it in the containers and "guestimate" the amount, and therefore the cost, of the frosting. As an experienced bakery employee the claimant believed she charged the correct amount for the frosting and the employer did not have any evidence that she did not do so. It appears that the actual problem was the checker missing the cake box when the claimant's mother went through the checkout line. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 10, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css