

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN P LIVINGSTON
Claimant

APPEAL NO. 11A-UI-02459-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 12/19/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Erin Livingston (claimant) appealed a representative's February 22, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2011. The claimant participated personally. The employer was represented by Paula Mack, hearings representative, and participated by Cindy Vashon, manager of human resources; Sandra Clark, bakery manager; and Matt Phippin, kitchen manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on November 15, 2007, as a part-time bakery clerk working daytime hours. Later, the claimant worked full-time hours as a daytime bakery clerk. She had an opportunity to work part-time as a laboratory assistant in the culinary section of Iowa Western Community College for three months. The employer agreed to reduce the claimant's hours to part-time again. The claimant completed an availability sheet indicating she could work daytime hours on Tuesdays and Thursdays. Later, she verbally amended her availability to work days on Saturdays and Sundays.

The claimant reported she would be absent on November 4, 13, and December 7, 2010. She was absent from work once because she was visiting her grandmother who soon afterwards passed away. She was absent another day when the scheduler put her on the schedule for a day the claimant had asked off. The claimant could not remember why she was absent a third time.

Due to the three absences, the scheduler thought she should not put the claimant on the schedule after December 19, 2010. The employer filled the claimant's hours with new hires.

The claimant filed for unemployment insurance benefits with an effective date of December 19, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 22, 2011 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw