

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BILLY C LO  
308 E PAYTON AVE  
DES MOINES IA 50315

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

HY-VEE FOOD STORES  
c/o TALX UC EXPRESS  
4100 HUBBELL #78  
DES MOINES IA 50317-4546

Appeal Number: 01A-UI-03249-DWT  
OC 02/15/04 R 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Billy C. Lo (claimant) appealed a representative's March 18, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Hy-Vee, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf with Jin Cousin and Greg Adams as witnesses. Megan O'Boyle observed the hearing. During the hearing, Employer's Exhibit One was offered and admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on October 16, 1995. He worked as a Chinese cook. The claimant received information that the employer could discharge an employee if an employee took an item from the employeys's store and did not pay for it. This included food. The employer required employees to pay for food before they ate it. The claimant understood this policy.

During the claimant's employment, he noticed some employees eating samples of food without paying for the food. The claimant did not report anyone for doing this.

On February 18, 2004 around 1:00 p.m., Cousin saw the claimant take two pieces of meatloaf off the deli. The claimant did not pay for the food and went on his break. Cousin reported the incident to Adams. Adams saw the claimant eating the food and asked him if he had a receipt. The claimant did not have a receipt. On February 18, 2004, the employer discharged the claimant for taking and eating food without paying for the food.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts show the claimant understood the employer required employees to pay for food before they ate it. The claimant's assertion that other employees took food without paying for it made it right for him to do so as well is also without merit. Even if some employees did not get caught violating the employer's rules, it does not make it right for the claimant to take food without paying for it. The evidence indicates the employer enforces the employer's rules when the employer knows about or can prove an employee has taken food without paying for it.

The claimant took food from the deli and did not pay for it. The claimant violated the employer's rule and committed work-connected misconduct. As of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's March 18, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/b