

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCIA M HUGO
Claimant

APPEAL NO: 13A-UI-08382-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/23/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's July 15, 2013 decision (reference 01) that concluded Marcia M. Hugo (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2013. The claimant participated in the hearing, and was represented by Sarah Reindl, Attorney at Law, and presented testimony from one other witness, Karen Burnhardt. Bruce Burgess of Corporate Cost Control appeared on the employer's behalf and presented testimony from one witness, Larry Knowles. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2012. She worked part time (about 25 hours per week) as a kitchen clerk at the employer's Mason City, Iowa store. Her last day of work was June 27, 2013. The employer discharged her on that date. The reason asserted for the discharge was unauthorized removal of store property.

The employer provides breakfast guests with a punch card which enables the guest to get a free breakfast after purchasing nine. The employer provided second-hand information asserting that on or about June 23 the claimant had punched her own punch card without purchasing a meal, and asserted that on or about April 21 she had redeemed multiple punch cards which the employer suspected the claimant had punched on her own. The punch cards in April actually came from the claimant's mother, Burnhardt, who had been a frequent breakfast customer with

other friends and family and who had been in the store with the claimant in April when the two of them redeemed the completed punch cards that Burnhardt had collected. In her first-hand testimony the claimant denied that she had ever punched her own punch card or that she had gotten a punch when she had not purchased a meal. She further testified that the person who had reported this allegation to the employer had recently been angry at the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion that she was in essence "stealing" punches or meals through misuse of the breakfast punch card program. The claimant denied these allegations in her first-hand testimony. The employer relies exclusively on the second-hand account from some other employees; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those employees might have been mistaken, whether they actually observed the entire time, or whether they is credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant actually misused the punch card program. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 15, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css