

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA E FORBES
Claimant

HY-VEE INC
Employer

APPEAL NO. 12A-UI-01356-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/12
Claimant: Appellant (1)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated February 2, 2012, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 13, 2012., in Davenport, Iowa. Claimant participated. The employer participated by Mark Esau, a products specialist; Paul Johnson, the assistant manager for store operations and acting human resources manager; Frank Streit, the manager wine and spirits; and Terry Farley, a witness. Pam Kiel represented the employer. The record consists of the testimony of Mark Esau; the testimony of Paul Johnson; the testimony of Terry Farley; the testimony of Frank Streit; the testimony of Monica Forbes; Claimant's Exhibit A and Employer's Exhibits 1-4.

ISSUE:

Was the claimant discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is retail grocery store chain. The claimant worked at a store in Davenport, Iowa. The claimant was hired on September 28, 2007, as a part-time bakery clerk. Her last day of work was January 2, 2012. She was terminated on January 2, 2012.

The incident that led to the claimant termination occurred on January 2, 2012. An employee, Terry Farley, came to the bakery counter and asked for one donut. Each donut costs \$0.89. The claimant put two donuts in the bag and wrote down \$0.50. Mr. Farley did not notice that there were two donuts in the bag instead of one. He went to the breakfast area and paid for his breakfast and the \$0.50 that was marked on the bakery bag.

The employee was eating his breakfast and Frank Streit, who is the wine and spirits manager, joined him at the table. Mr. Streit noticed the bakery bag and saw that only \$0.50 was marked on the bag. He knew that donuts cost a minimum of \$0.89. Mr. Farley noticed that there were

two donuts in the bag. He had ordered only one. Mr. Streit reported the situation to management and the claimant was asked to come to office to meet with Mark Esau, who at the time was a manager of perishables. The claimant admitted that she put two donuts in the bag and only marked at \$0.50. She was trying to ingratiate herself with the employee.

The employer has a code of conduct that prohibits theft of company property. The claimant was aware of the code of conduct.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a worker to the employer is honesty and fidelity. An employer can reasonably expect that an employee will not misappropriate its property. The employer has the burden of proof to establish misconduct.

The evidence in this case established that the claimant knowingly gave another employee two donuts and charged him only \$0.50 for the two donuts. She testified that she did this to ingratiate herself. She knew what she was doing was wrong but she did it anyway. The claimant, in effect, gave the other employee an unauthorized discount. Although the amount of

money is small, the claimant's actions constitute a misappropriation of the employer's property. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated February 2, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css