

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VIOLA NASH**  
Claimant

**APPEAL NO. 13A-UI-11852-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

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

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated October 16, 2013, reference 01, which held that Viola Nash (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2013. The claimant participated in the hearing. The employer participated through Dan Vondrak, Store Director; Estella Ebner, Human Resources Manager; Zack Teska, Bakery Manager; and Ajah Anderson, Employer Representative. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**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 employed as a full-time cake decorator from March 17, 2004 through September 25, 2013 when she was discharged for alleged poor customer service. She received no disciplinary warnings in 2013 and the last warning in her record was issued on September 11, 2012. A customer requested the claimant write on a cake on September 24, 2013 and stated that he would pick it up at 1:00 p.m. The claimant wrote down the order and set the cake on the counter for the cake to be written on at the time the customer returned to pick up the cake. Although the policy had changed, the claimant understood the policy is that the cake is not decorated until the customer is there to pick it up. This was due to loss of products when the customer failed to pick up the cake but the store manager changed that policy when he was assigned to that store five years earlier.

The claimant left work after her shift without decorating the cake but it was on the counter with the order. The customer arrived later to pick up the cake but it was not completed and had actually been placed back in the cake case for sale. The customer was extremely upset and

complained to the employer. The employer questioned a few bakery employees who denied seeing a cake order. The claimant was subsequently discharged for not completing an order and not decorating the cake.

However, the claimant testified she had completed the cake order but admitted she did not decorate the cake because she did not think she was supposed to do so before the customer arrived. Co-employee and cake decorator Stacy McNabb told the claimant she saw the cake on the counter with the order but the employer never questioned this employee. At the time of termination, the store director and the bakery manager both heard the claimant say she was not aware the policy had changed.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1). It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The claimant was discharged on September 25, 2013 for alleged poor customer service. However, she adequately explained her actions and had no wrongful intent. What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The employer has not met its burden to prove work-connected misconduct as defined by the unemployment insurance law. Benefits are allowed.

### **DECISION:**

The unemployment insurance decision dated October 16, 2013, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs