

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

JENNIFER A BARKER
1616 E BELL AVE
DES MOINES IA 50320

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

DAVID WILLIAMS
TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 05A-UI-00725-CT
OC: 12/19/04 R: 02
Claimant: Respondent (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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated January 13, 2005, reference 02, which held that no disqualification would be imposed regarding Jennifer Barker's separation from employment. After due notice was issued, a hearing was held by telephone on February 7, 2005. Ms. Barker participated personally. The employer participated by Les Bruner, Human Resources Manager, and Tally Rousselow, Store Operations Manager. The employer was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Barker was employed by Hy-Vee, Inc. from November 19, 2001 until December 13, 2004. She was last employed as a cashier and worked approximately ten hours each week. She was discharged because of her attendance.

Ms. Barker had seven absences in August and September of 2004. The absences were due to problems she was experiencing with her back after a work-related injury in August of 2003. She was absent September 30 and October 1 and 2, 2004. She provided a doctor's statement to support the need to be absent. On October 13, 2004, Ms. Barker was counseled regarding her attendance and advised that she would either need to provide a doctor's statement or find her own replacement for future absences.

Ms. Barker was absent November 1 and November 3 and provided a doctor's statement. She was also absent on November 12 and the employer felt it was covered by the doctor's statement for November 1 and 3. Ms. Barker was absent on November 27 because of pain in her back. She did not see a doctor on the day of absence. She attempted to get a doctor's excuse on November 29 but was unable to do so. Ms. Barker called on December 9 to report that she would be absent because of back pain. She was told that she would need to provide a doctor's statement. Ms. Barker told Les Bruner that she was not sure she would be able to get a doctor's statement because she did not feel well enough to travel to the doctor's office. Because it was a shift of less than three hours, she did not find a replacement as she was led by Mr. Bruner to believe that it would not be necessary. When Ms. Barker failed to present a doctor's statement on her next scheduled workday, December 13, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Barker was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. All of Ms. Barker's absences were for medical reasons and were properly reported to the employer. She had received notice on October 13 that she would need to provide a doctor's statement to support future absences. She did not obtain a doctor's excuse for November 27 as it was a Saturday and she did not believe the doctor would be available. She made a good-faith effort to obtain an excuse the next working day, Monday, November 29, but the doctor would not provide an excuse after the fact.

Ms. Barker also had good cause for not providing a doctor's statement for December 9 as she did not feel physically well enough to travel to the doctor's office. Although she did not provide the doctor's statements required for November 27 and December 9, the administrative law judge considers the absences to be excused. The evidence of record does not identify any unexcused absences on Ms. Barker's record. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. For the reasons state herein, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job

insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated January 13, 2005, reference 02, is hereby affirmed. Ms. Barker was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc