

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALIZABETH V HENRIKSEN**  
Claimant

**APPEAL NO. 17A-UI-01977-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/22/17**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a -- Discharge

**STATEMENT OF THE CASE:**

Hy-Vee, Inc., the employer, filed a timely appeal from a representative's decision dated February 13, 2017, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 15, 2017. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Brad Sartin, Hearing Representative, and witnesses, Ms. Sandy Berven, Human Resource Manager, Mr. Bill Beardsley, Pharmacist, and Mr. Darin Kriech, Store Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Alizabeth Henriksen was employed by Hy-Vee, Inc. from August 23, 2012 until January 19, 2017, when she was discharged from employment. Ms. Henriksen was employed as a full-time certified pharmacy technician and was paid by the hour.

The claimant was discharged on January 19, 2017, based upon her refusal to follow work directives that were given to her the previous day, January 18, 2017.

On January 18, 2017, the claimant was working in a back area of the facility's pharmacy department when the department experienced an influx of customers, both at its drive-up window and at its inside counter. Because the department did not have sufficient help to cover the drive-up window and the inside counter customer, Mr. Beardsley, a pharmacist in the department, personally directed Ms. Henriksen several times to stop what she was doing and to wait on customers. Ms. Henriksen did not respond to his directives. A short time later, another pharmacist in the department, Theresa Paulson, went back to the area where Ms. Henriksen was working and personally directed the claimant to either come out of the back area and wait on customers or "go home". The claimant did not follow Ms. Paulson's directive to begin waiting

on customers, but instead left the premises at least five minutes before her work shift was to have ended.

The company places high importance on customer service and the claimant had received previous warnings about the manner in which she dealt with customers and checking patrons out at the cash register when needed. Ms. Henriksen was given a final warning by the employer on October 19, 2016, for refusing to follow work directives and failing to take care of customers when the claimant felt she was "too busy". Claimant was warned at that time that in the future, she must take care of customers immediately regardless of the job that she was doing and to follow all work directives given to her by a pharmacist. The claimant was warned that failure to comply with the warning could lead to termination from employment.

On January 19, 2017, the store director met with the claimant to review the most recent incident. When the claimant was unwilling to acknowledge her need to improve and follow work directives, she was discharged from employment.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the evidence in the record shows that the claimant had been repeatedly warned that as part of her duties as a pharmacy technician, she must wait on customers when directed to do so. The claimant had most recently been put on notice of the employer's reasonable expectations when she was given a final written warning on October 19, 2016, for refusing to wait on a customer because the claimant felt that she was "too busy". Ms. Henriksen was warned at that time that she must wait on customers when directed to do so and failure to follow the directives could result in termination from employment.

The evidence in the record establishes that the claimant was repeatedly directed to wait on customers during the afternoon of January 18, 2017, and that the request had been made prior to the end of the claimant's work shift. When the claimant did not follow the work directives of Mr. Beardsley, a pharmacist, a second pharmacist went to the area where the claimant was working and told the claimant to either follow her work directive to wait on customers or to leave. The evidence in the record establishes the claimant chose to leave and did so prior to the end of her work shift, while work time remained available to follow the directive that had been given to her. The account given by the second pharmacist to Mr. Beardsley, corroborated by the claimant's conduct in leaving work prior to the end of her shift and while time remained available for her to wait on the customers as directed. When the claimant showed an unwillingness to follow the reasonable and work-related work directives that were being given to her, the decision was made to terminate Ms. Henriksen from her employment. The administrative law judge concludes the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and it otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$822.00 since filing a claim with an effective date of January 22, 2017, for the week ending dates February 25, 2017 through March 11, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a

claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's decision dated February 13, 2017, reference 01, is reversed. Claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$822.00 and is liable to repay this amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding interview.

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Terry Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs