

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY L SCHMIDT
Claimant

APPEAL NO. 10A-UI-09091-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/23/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 15, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 25, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Ralph Smith. Kenneth Carp participated in the hearing on behalf of the employer with witnesses Chris Arnold, Pat Ohlerking, and Stacy Hoard.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from May 2, 1996, to May 3, 2010. During the last several years of her employment, she worked as the bakery manager.

On April 23, 2010, the employer terminated the claimant as bakery manager for unsatisfactory work performance. Initially, she was notified that she would have 30 days to find another position, but the store manager later agreed that she could work through the end of May. The store manager also informed her that she would not be allowed take a position in his store. The claimant could not transfer to a different store, but instead had to apply for work in another store with no assurance that she would be hired.

On May 4, 2010, the claimant informed management that she was going to take whatever paid leave she had coming and end her employment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 23, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

When an employer terminates a person from her position but allows her to apply for a different job with no assurance of being hired, it is a discharge for unemployment insurance purposes. This is especially true when only the position to apply for is in another store with a different manager who has no obligation to hire the person. The claimant was discharged from her job as bakery manager.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The evidence establishes the claimant was discharged for unsatisfactory work performance, which did not rise to the level of willful and substantial misconduct. The employer presented only general reasons for the discharge, no specific evidence of any current act of disqualifying misconduct.

The unemployment insurance rules provide that where a claimant voluntarily quits in advance of the announced scheduled layoff, the disqualification period is from the last day worked to the date of the scheduled layoff. Benefits are not denied from the effective date of the scheduled layoff. 871 IAC 24.25(40) The same principle applies here. The claimant could have worked until the end of the month, but she voluntarily chose to leave work before the effective date of her termination. As a result, she is ineligible for benefits for the week of May 23 through 29. She is qualified to receive benefits effective May 30, 2010.

DECISION:

The unemployment insurance decision dated June 15, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits effective May 30, 2010, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw