

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDI A SWEETLAND
Claimant

APPEAL 15A-UI-09439-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/02/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 21, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for violating a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2015. Claimant Sandi Sweetland participated on her own behalf. Employer Hy-Vee, Inc. participated through Loss Prevention Supervisor Zac Rinderknecht and was represented by Larry Lampel of Corporate Cost Control, Inc. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a cashier beginning July 28, 2014, and was separated from employment on July 29, 2015, when she was discharged. The employer has a fuel saver program in which customers can earn points or certain monetary amounts off the price of fuel based on the products they purchase. The employer has a policy stating the points earned by customers are non-transferrable to its employees. The claimant acknowledged this policy when she was hired. (Employer's Exhibit 1).

On July 24, 2015, the claimant swiped an unregistered fuel saver card on 17 transactions resulting in an accumulation of \$0.10 off each gallon of fuel up to a total discount of \$2.00. The employer has a computer system that tracks when the same fuel saver card is used on multiple transactions on a register by the same associate. The claimant's conduct was flagged and investigated by Loss Prevention Analyst Josh Herold. He forwarded the results of his investigation to Loss Prevention Supervisor Zac Rinderknecht.

On July 29, 2015, Rinderknecht and Store Director Todd Robertson met with the claimant to discuss the situation. The claimant explained she was conducting an experiment to answer the questions she received from customers. She also provided them feedback she received from

customers about the fuel saver program. When Rinderknecht asked the claimant where the card was, she stated she believed it was in her purse. However, she also stated this was not her card and it was just a card she found.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer has argued the claimant was fraudulently gathering points which could have resulted in harm. It has alleged the misconduct was deliberate and fraudulent similar to an employee stealing \$10.00 from the cash register. However, the claimant's conduct does not appear to be deliberate nor did it have the same level of intent as that inferred from removing cash from a cash register. The claimant acknowledged engaging in the behavior when confronted by the employer. She did not attempt to hide or conceal her conduct. She also credibly testified she had no need for the fuel savings as she had no vehicle and took the bus to work. The claimant did not deliberately or intentionally attempt to harm the employer.

The conduct for which claimant was discharged was an isolated incident of poor judgment. The claimant had several avenues she could have sought to have her concerns or questions answered without conducting her own experiment. Her experiment, regardless of the reasons, did violate the employer's policy. However, as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

DECISION:

The August 21, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs