

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M SPAIN**  
Claimant

**APPEAL NO. 13A-UI-03121-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/10/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jennifer Spain (claimant) appealed a representative's March 8, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Hy-Vee (employer) for failure to follow instructions. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 18 and 30, 2013. The claimant participated personally. The employer was represented by Bruce Burgess, Hearings Representative, and participated by Suzi Sundholm, Store Director; Mary Hanson, Pharmacy Manager; and Kim Shafer, Human Resource Manager. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on January 2, 2008, as a full-time staff pharmacist. The claimant signed for receipt of the employer's handbook at the time of hire and July 19, 2010. On September 4, 2012, the employer issued the claimant a written warning regarding the claimant's scheduling, attitude, productivity, and communication. The employer notified the claimant that further infractions could result in termination from employment. On October 18, 2012, the employer issued the claimant a verbal warning recapping the written warning of September 4, 2012, and the claimant's failure to follow procedures. On January 14, 2013, the pharmacy manager told the claimant she noticed the claimant stayed late for two days in a row without leaving the employer a note indicate the reason for staying late. The employer told the claimant she could not do that in the future.

On February 3, 2013, the claimant's shift ended at 6:00 p.m. and the last customer left at 6:00 p.m. The pharmacy manager came in to the pharmacy to work and noticed the claimant was still working. She told the claimant she was shutting the computer down to run reports. With the computer down the claimant could not run prescriptions. When the pharmacy manager

left about 30 minutes later, she told the claimant to go ahead and leave. The pharmacy manager did not authorize the claimant to stay any longer. The claimant stayed approximately 30 minutes longer than the pharmacy manager, until 7:10 p.m.

The claimant did not leave the employer a note indicating why she needed to stay late. On February 5, 2013, the pharmacy manager questioned the claimant. The claimant told the employer that she was waiting on customers. The pharmacy manager reminded the claimant there were no customers. The claimant acknowledged that she knew the policy but did not think she had to follow the policy of actually writing a note. The claimant indicated in the meeting that she did not feel the policy of leaving a note was a policy she was required to follow because the timecard indicated the hours she worked and it was assumed she would be working on pharmacy business.

On February 6, 2013, the store director was involved in a meeting. The claimant next worked on February 11, 2013. The employer terminated the claimant on February 11, 2013, for failure to follow instructions.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant failed to follow instructions when she did not leave on February 3, 2012, when told to do so by the pharmacy manager, when she did not leave a note on February 3, 2012, indicating she stayed beyond the time the pharmacy manager left, and when she did not accurately tell the pharmacy manager on February 5, 2013, what she was doing on February 3, 2012, when she stayed late. In addition, the claimant's attitude indicated that she did not plan to follow the employer's instructions for leaving the employer a note when working late in the future. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's March 8, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css