

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY B MAAS
Claimant

APPEAL NO: 14A-UI-07684-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/29/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amy B. Maas (claimant) appealed a representative's July 24, 2014 (reference 02) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2014. The claimant participated in the hearing. Larry Lampel, of Corporate Cost Control, appeared on the employer's behalf and presented testimony from two other witnesses, Dale Mitchell and Nichole Bredshaw. During the hearing Employer's Exhibits One, Two, and Three and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 12, 2013. She worked part time (about 15 – 20 hours per week) as a cashier. Her last day of work was April 29, 2014. The employer discharged her on that date. The reason asserted for the discharge was using some customers' transactions to add fuel saver reward points to her own card.

The claimant acknowledged that on April 27 there were six transactions where she applied the transactions to her own fuel saver reward card. Two of them were specifically known friends who told her to put the points on her own card, the other four were familiar to her but also indicated she could have the points as they did not have cards of their own. The claimant had previously inquired of the employer how many people could join on to share points on one card and had been told there was no limit. The set of the employer's company policies which had

been given to her at the time of her hire were not the most current set of policies and did not contain the provision that an employee could not take any customers savings program points for their own. However, when the employer learned that the claimant had taken the points for the customers' transactions on April 27, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the claimant's application of transactions to her own fuel saver reward card on April 27, 2014. Under the circumstances of this case, the claimant's taking of the points on that date was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

DECISION:

The representative's July 24, 2014 (reference 02) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can