

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>THOMAS M DALY</b> Claimant  <b>HY-VEE INC</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO. 12A-UI-04574-VST</b></div> <div><b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 03/25/12</b> <b>Claimant: Appellant (1)</b></div>
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Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated April 17, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2012. Claimant participated. The employer participated by Leah Hefel, human resources manager, and Matt Burke, manager of store operations. The employer was represented by Sabrina Bentler. The record consists of the testimony of Leah Hefel; the testimony of Matt Burke; the testimony of Thomas Daly; and Employer's Exhibits 1-5.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked at a Hy-Vee grocery store located in Dubuque, Iowa. The claimant was a part-time kitchen clerk. He was hired on March 24, 2011. His last day of work was March 17, 2012. He was suspended and then terminated on March 23, 2012.

The incident that led to the claimant's termination occurred on March 17, 2012. The employer has a written rule, of which the claimant was aware, that if an employee leaves the premises, he or she must clock out. The claimant failed to clock out when he left the premises on March 17, 2012. He had received a warning for the exact same offense on February 16, 2012. He was told that if he violated the policy again he would be suspended and/or terminated.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to disqualification occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant violated known policy by failing to clock out when he left the premises on March 17, 2012. The claimant had been previously warned about having committed this same offense on February 16, 2012. He knew that if he failed to clock out again that he could be suspended and/or terminated. When asked why he did not clock

out on March 17, 2012, the claimant had no reason. The administrative law judge therefore concludes that the claimant knowingly violated a work rule and that he had been previously warned about the consequences of doing so. The employer has shown misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated April 17, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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