

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL M HUTCHINSON**  
Claimant

**APPEAL NO. 13A-UI-04732-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 06/10/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cheryl Hutchinson (claimant) appealed a representative's April 17, 2013 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Hy-Vee (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 22, 2013. The claimant was represented by John Moeller, Attorney at Law, and participated personally. The employer was represented by Sabrina Bentler, Employer's Representative, and participated by Brent Frady, Assistant Human Resources Manager; Allison Skouge, Manager of General Merchandise; and Mo Lang, Manager of Store Operations.

**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 August 29, 2007, and at the end of her employment she was working as a part-time pharmacy delivery driver. The claimant signed for receipt of the employer's handbook on December 1, 2010, and April 4, 2012. The employer issued the claimant a verbal warning in the fall of 2012, after a customer complained that she was speeding through an alley. On January 31, 2013, the employer issued the claimant a written warning for driving the employer's vehicle aggressively. The employer notified the claimant that further infractions could result in termination from employment.

On April 2, 2013, a customer contacted the employer and described the claimant and the employer's vehicle the claimant was driving that day. The customer described that the claimant almost rear ended her. The claimant tailgated her through heavy traffic and then switched into another lane and sped off. The customer had children in her vehicle and was very upset by the claimant's behavior. The employer investigated and found the claimant had been in that location at that time. On April 3, 2013, the employer terminated the claimant.

## 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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The claimant's and the employer's testimony is contradictory. The administrative law judge finds the employer's testimony to be more credible. The claimant's testimony was internally inconsistent.

## DECISION:

The representative's April 17, 2013 decision (reference 03) 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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