

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRI GLIDEWELL**  
Claimant

**APPEAL NO. 10A-UI-11712-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 06/27/10**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated August 13, 2010, reference 01, which held that Terri Glidewell (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2010. The claimant participated in the hearing. The employer participated through Chad Launderville, Manager of Store Operations; Rick Czerweik, Product Manager; and Tim Speir, Employer Representative. Employer's Exhibits One through Six were admitted 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time product specialist from September 20, 2006 through July 6, 2010. She was discharged for repeated negligence and poor work performance. The claimant received three written warnings for pricing errors on June 9, June 10, and August 5, 2009. These errors resulted in lost revenue to the store and could have been prevented if the claimant had followed the required steps and double checked her work.

A written warning was issued to her on February 26, 2010 after she gave a vendor a handheld pricing unit, which has sensitive and confidential information that should not be seen by anyone other than company employees. The claimant was given a one-week unpaid suspension and advised she needed to obtain the information herself instead of having someone else do the work for her. A final written warning was issued to her on March 15, 2010 for an additional pricing error that resulted from her failure to follow the employer's instructions.

On March 8, 2010, the claimant created an ad batch for a weekend ad but did not use the right look up number for the eight-piece chicken pack, which would have resulted in lost revenue. This was done even though an explanatory email was sent out to all stores about this ad on March 1, 2010

and the look-up number was printed in bold and large type. The claimant also incurred additional expenses by creating her own signs instead of waiting for the red hot sale signs from the corporate office. She had been previously warned to not start ads too early since prices can change and this creates more work and exposes the ads to a greater chance of errors.

The final incident occurred on June 30, 2010, when the claimant failed to change the ad price for Wonder hamburger and hot dog buns back to the regular price. The buns were on sale for \$1.00 for two days and it was the claimant's responsibility to change the ad back to the regular price but she failed to do so. The store sustained another financial loss due to the error and the employer discharged her as a result.

The claimant filed a claim for unemployment insurance benefits effective June 27, 2010 and has received benefits after the separation from employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 6, 2010 for repeated negligence and poor work performance. Negligence does not constitute misconduct unless recurrent in nature; a

single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The claimant was more than capable of checking for errors and would not have made as many if she had simply followed the necessary steps. Her failure to do so demonstrates a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated August 13, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw