

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A HAWK
Claimant

APPEAL NO. 07A-UI-05860-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/20/07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 5, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 28, 2007. Mr. Hawk participated personally. Employer participated by David Williams, hearing representative, and witnesses Joe Miller, Mary McCleary, and Andrew Dewine. Employer's Exhibit One was received into evidence.

ISSUE:

At issue in this matter is whether Mr. Hawk was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from May 29, 2002, until April 26, 2007, when he was discharged for violation of company policy. Mr. Hawk held the position of full-time night gas station clerk and was paid by the hour. Mr. Hawk was discharged after the company reviewed security cameras and determined that the claimant had issued himself an unauthorized fuel discount. Under the company's established discount policy, patrons are allowed to avail themselves up to a \$0.15 per gallon discount if they demonstrate at the time of purchase of fuel that they have also purchased groceries from Hy-Vee Food Stores in the amount of \$150.00 or more. On the night in question, the claimant was observed purchasing 7.48 gallons of gasoline shortly before reporting for his 10:00 work shift. Mr. Hawk paid a shift worker that was on duty for the gasoline purchase and subsequently, after other workers had left, removed an amount from company cash registers equivalent to \$0.15 for each gallon of gas that he had earlier purchased, placing the \$1.18 unauthorized discount into his pocket. The claimant did not claim the \$0.03 per gallon discount that is available to employees at the time that he purchased the fuel from another attendant but waited until no other workers were present before giving himself the unauthorized discount amount. At the time of the inquiry leading to the claimant's discharge, Mr. Hawk provided a copy of the cash receipt for the initial

purchase of the gasoline and had no explanation for his actions when shown the security video of the incident. The company, at the time, was closely monitoring the gas station facility because of repeated pilferage.

It is the claimant's position that his wife had purchased groceries from Hy-Vee Food Stores in the amount of \$150.00 within the month and thus the claimant felt authorized to take the \$0.15 per gallon discount. The claimant did not provide verification of the purchase at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that Mr. Hawk was discharged for violating a known and reasonable company discounting policy. Under the policy, employees are eligible to take a \$0.03 per gallon discount. Patrons who provide proof of purchase of \$150.00 or more of groceries from Hy-Vee Food Stores at the time that they are purchasing gasoline are eligible for a \$0.15 per gallon discount on their fuel purchase. On the night in question, the claimant made an initial purchase from another worker and did not claim a discount. Subsequently, after other workers had left the premises, Mr. Hawk took the equivalent of a \$0.15 per gallon discount from the company cash register and placed the proceeds in his pocket. At the time of discharge, the claimant did not indicate that the discount that he had provided himself was based upon a recent purchase of groceries in the amount required, nor did the claimant provide any evidence of grocery purchase or claim that it had occurred. The evidence establishes that when showed a video of the unauthorized transaction, Mr. Hawk had no explanation for his conduct. Although the claimant maintains that the discount was based upon a previous grocery purchase in the required amount by another family member, Mr. Hawk provided no evidence or witnesses to support that contention at the time of hearing.

Although the amount is small in this case, the administrative law judge must nevertheless find that the claimant's conduct was in willful violation of a known company rule and was in disregard of the employer's interests and reasonable standards of behavior that they had a right to expect of employees under the provisions of the Iowa Employment Security Act. The administrative law judge must therefore conclude that the claimant was discharged for misconduct in connection with his work.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid in the amount of \$1,854.00.

DECISION:

The representative's decision dated June 5, 2007, reference 01, is reversed. The claimant was discharged for misconduct in connection with his work. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. The claimant is overpaid benefits in the amount of \$1,854.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw