

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEVEN M HENSCHEL
344 W 1ST ST
DUBUQUE IA 52001

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10417-DWT
OC: 08/29/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Steven M. Henschel (claimant) appealed a representative's September 16, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Hy-Vee, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2004. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf with witnesses, Denny Hartogh and Mark Kasemeier. Marla Gentry observed the hearing. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 11, 1993. He worked as a full time night stocker. Steve Wallace was his supervisor.

Prior to August 21, the claimant's job was not in jeopardy. The evening of August 21, the claimant was not working but came to the employer's to buy some steak. While the claimant was in the store, a customer who knew the claimant was an employee asked him if the price on prepackaged barbeque ribs was correct. The ribs normally sold for more than \$10.00 a package, but there were six packages marked down to \$1.75. While the claimant may have looked for a manager, he did not see one and told the customer that the price must be correct. After the customer left, the claimant pulled out the money he had in his pockets to see if he had enough money to buy some of these marked down packages of ribs. From a distance, Kasemeier saw the claimant and concluded he acted suspicious. Kasemeier did not approach the claimant; instead, he followed the claimant to the checkout counter. The labels on the packages indicated they were from the Cheese Island.

When Kasemeier talked to the claimant in his office, the claimant denied he put any labels on the meat. Kasemeier reported the incident to Hartogh. When Hartogh talked to the claimant, he again denied he put any labels on the pre-packaged ribs. The claimant also admitted that during his employment he had gone to the Cheese Island and made sandwiches for himself when he knew another employee should have done this for him. Since the claimant did not know how to make labels at the Cheese Island, he wrapped up the sandwich he made for himself and a cashier charged him 50-cents for the sandwich.

Based on the employer's investigation, the employer discharged the claimant on August 25, 2004. The employer discharged the claimant for failing to act in the best interests of the employer the evening of August 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established a business reason for discharging the claimant. If the claimant changed labels on the pre-packaged meat, he committed work-connected misconduct. Even though someone put a label on pre-packaged meat indicating the meat only cost \$1.75, the evidence does not establish that the claimant did this. The claimant is guilty of using poor judgment by failing to contact a manager the evening of August 21 to find out if in fact the meat only cost \$1.75 a package. Since the claimant's job was not in jeopardy prior to August 21, his testimony is credible and there had been no problems of a previous nature, this isolated instance of poor judgment does not by itself constitute work-connected misconduct. Therefore, as of August 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 16, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf