

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABBIE K BOWMAN
Claimant

HY-VEE INC
Employer

APPEAL 17A-UI-10209-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/17/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 2, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 6, 2017. Claimant participated. Employer participated through hearing representative Lisa Harroff and human resource manager Lori DiRenzo. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a department manager from September 4, 2015, and was separated from employment on September 18, 2017, when she was discharged.

The employer has a written policy that prohibits employees from transferring discounts (e.g., fuel saver discount) customers receive or earn to the employees' benefit (e.g., employee's fuel saver). Employer Exhibit 1. Employees are required to go a supervisor to add fuel saver discounts if there is an error. Claimant was aware of the policy. Employer Exhibit 1.

The employer had a three day sale advertised for August 3, 4, and 5, 2017 that allowed customers to earn \$.50 off a gallon of gas with purchase of \$100.00. On August 6, 2017, claimant purchased over \$300.00 in groceries while she was off duty. Claimant did not receive the advertised discount when she made her purchase. Claimant did not discover she did not receive the fuel saver discount until later that night when she was at home.

On August 7, 2017, claimant returned to the employer for her scheduled shift. During claimant's scheduled shift, she took her receipt to Donna Hayes, the pay station clerk in claimant's department. Claimant does not supervise Ms. Hayes. Ms. Hayes is not a supervisor or in management. Claimant showed Ms. Hayes her receipt and requested \$3.00 in fuel saver discounts from her purchase. If claimant had made the purchase on August 3, 4, or 5, 2017,

she would have only been eligible for \$1.50 in fuel saver discounts, not \$3.00. Ms. Hayes started entering the fuel saver discount for claimant, but she had to leave to help clear tables and only added \$.20 in fuel saver discounts. Claimant left and went to customer service to see if there was a way to speed up the process. Claimant was informed there was not a way to speed up the process. Claimant then used her supervisor number to add \$2.20 in fuel saver discounts to her account, for a total of \$2.40. Employer Exhibit 1. Claimant used her supervisor number because she was the employee ringing up the discount. Claimant had to stop adding fuel saver discounts because the employer got busy. Claimant did add the remaining \$.60 she thought she was eligible for because she got busy and forgot about it.

On August 10, 2017, the store director received a report regarding manual fuel savers when fuel savers over \$1.00 are manual added. Employer Exhibit 1. Claimant's August 7, 2017 transactions adding \$2.40 in fuel saver discounts was on the report. After the employer received the report, it began an investigation.

On August 15, 2017, Ms. DiRenzo interviewed Ms. Hayes. Ms. Hayes told the employer that claimant showed her a receipt for over \$300.00 and that the employer owed her \$3.00 in fuel saver discounts. Ms. Hayes told the employer she helped claimant with \$.20 and then advised claimant to go to customer service. Claimant left to go to customer service to see if she could more than \$.10 at a time. Claimant then returned and decided to handle it. Claimant used her supervisor number to add another \$2.20 to get a total of \$2.40 in fuel saver discounts.

Claimant was on medical leave starting August 9, 2017 due to a work related injury and returned to work on September 11, 2017. Claimant did work during her medical leave performing desk work, but the employer did not believe it could approach her while she was on her medical leave to question her about the fuel saver discounts. Claimant would work an hour or two a day, but not every day.

On September 18, 2017, the store director and Ms. DiRenzo met with claimant regarding the fuel saver discounts. The employer went over the three days sales promotion with claimant and over other promotions with claimant. The store director explained the report he received from loss prevention department and the employer's policy. The store director told claimant he could have helped her if she would have asked. Claimant told the employer she misread the ad. The employer told claimant she was discharged for violating the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). "Theft from an employer is generally disqualifying misconduct." *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998). "Value is . . . not the

issue” in determining misconduct and “a single attempted theft [may] be misconduct as a matter of law.” *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer’s rule requiring employees to have a supervisor enter their fuel saver discounts if there is an error is reasonable to prevent supervisors from entering unauthorized fuel saver discounts.

The employer had an advertised sale promotion for fuel saver discounts on August 3, 4, and 5, 2017. On August 6, 2017, claimant purchased over \$300.00 in items from the employer, but was outside the employer’s advertised promotion period. Claimant did not receive the fuel saver discounts for her purchases on August 6, 2017. The employer presented substantial and credible evidence that on August 7, 2017, while claimant was working, she approached an employee that was not a member of management or a supervisor and requested the employee add \$3.00 in fuel saver discounts to her fuel saver account. After the employee only added \$.20, claimant then added \$2.20 in fuel saver discounts to her account using her supervisor number. Claimant’s argument that she mistakenly read the advertised sale promotion is not persuasive. On August 6, 2017, claimant was clearly outside the sales promotion. Claimant also requested more in fuel saver discounts than she would have been eligible for under the promotion if she would have made the purchases during the promotion; the sales promotion was also for \$.50 for every \$100.00 purchased, not \$.50 for every \$50.00 purchased. Furthermore, the employer presented substantial and credible evidence that she tried to circumvent the promotion and the employer’s policies by adding the fuel saver discount to her account using her supervisor number instead of approaching another supervisor.

The employer presented substantial and credible evidence that claimant’s conduct was a “deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]” Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The October 2, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs