

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TYRECAS MATLOCK**  
Claimant

**APPEAL NO. 19A-UI-00658-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/16/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tyrecas Matlock (claimant) appealed a representative's January 11, 2019, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 7, 2019. The claimant participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Ryan Parker, Store Director, and Nathan Myhre, Assistant Manager of the Meat Department. The employer offered and Exhibit 1 was received into evidence.

**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: Mr. Matlock was hired on October 21, 2018, as a part-time meat department cook. He signed for receipt of the employer's handbook on October 24, 2018. The employer's policy stated, "Theft in or outside of work is grounds for termination. Employees are not permitted to wait on themselves, family members or close personal friends". The employer did not issue Mr. Matlock any warnings during his employment.

Mr. Myhre frequently marked down outdated meat for sale to Mr. Matlock. Mr. Matlock would show the item and the date to Mr. Myhre and he would tell another clerk to mark the item down for Mr. Matlock. Mr. Matlock would not determine the price.

On December 16, 2018, Mr. Matlock showed Mr. Myhre two roasts that were outdated. Mr. Myhre said they could be marked down for Mr. Matlock and then walked away to help a customer. At the end of his shift, Mr. Matlock asked Mr. Myhre for confirmation about marking down the roasts. Mr. Myhre told another clerk to mark them down. Without input from Mr. Myhre or Mr. Matlock, the clerk marked the prime rib roasts down to \$1.00 apiece. Mr. Matlock paid for the roasts at a register.

Mr. Matlock worked two more days and similar mark downs and purchases of pork chops and hamburgers occurred. On December 17, 2018, Mr. Myhre told Mr. Parker that he authorized the sale of pork roasts, not expensive beef roasts to Mr. Matlock. Mr. Myhre also reported that Mr. Matlock told the clerk what price to put on the roasts. Without questioning the clerk or Mr. Matlock, Mr. Parker terminated Mr. Matlock on December 20, 2018, for theft.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present the testimony of the clerk. It chose not to present him or his statement. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

The employer and Mr. Matlock agree that Mr. Myhre decided to mark down the price of two roasts for the claimant. They agree that Mr. Myhre then walked away to help a customer. They also agree that another clerk put the price on the roasts. Other details may be disputed. What is clear is that Mr. Myhre had a pattern of behavior of giving Mr. Matlock discounts on meats. The final incident where the claimant was given two expensive roasts for \$1.00 each may have been a mistake for Mr. Myhre or a mistake made by the clerk. Mr. Myhre's mistake of misidentifying the type of roast or the clerk's mistake of not putting the correct price on the items does not mean Mr. Matlock took the meat without paying the price the clerk placed on the roasts. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's January 11, 2019, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs