

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A WILLIAMS
Claimant

APPEAL NO. 07A-UI-08109-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

HY-VEE INC
Employer

**OC: 07/18/07 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated August 20, 2007, reference 01. The decision allowed benefits to the claimant, Cheryl Williams. After due notice was issued, a hearing was held by telephone conference call on September 10, 2007. The claimant participated on her own behalf. The employer participated by Manager of Store Operations Scott Gilbert, Manager of Perishables Pat Lamb and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cheryl Williams was employed by Hy-Vee from January 31 until April 9, 2007, as a part-time checker. At the time of hire she received a copy of the employee handbook which strictly prohibits the use or possession of alcohol or controlled substances in the workplace, whether on or off duty.

On Monday, April 9, 2007, the claimant was not scheduled to work and consumed three 12-ounce beers and a small, personal-sized bottle of hard liquor. She then received a call from the human resources manager asking her to come in because the store was short-handed. Instead of refusing, for which there would have been no disciplinary consequences, Ms. Williams agreed to work.

After her arrival several employees reported to the human resources manager she appeared to be unbalanced and her speech was slurred. Director of Store Operations Scott Gilbert was notified and he personally observed her condition. She was asked to come to the human resources department where Mr. Gilbert interviewed her. She acknowledged she had consumed the alcohol before agreeing to come into work and knew that it was against policy to

be at work under the influence of alcohol or controlled substances. She was discharged at that time.

Cheryl Williams has received unemployment benefits since filing a claim with an effective date of July 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant was discharged for violation of a known company policy. She did not have to come in to work that day and if she had declined to fill in while the store was short-handed, this would not have been considered an absence to be counted against her. But instead of declining she came in to work after consuming considerable alcohol and was intoxicated while on duty on company premises. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 20, 2007, reference 01, is reversed. Cheryl Williams is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$5,323.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

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