

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

DAWN J ROBERTS
2421 S TAFT AVE APT 6
MASON CITY IA 50401-6257

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

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 06A-UI-02287-JTT
OC: 01/22/06 R: 02
Claimant: Respondent (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 is 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 for Misconduct
Section 96.3(7) - Recovery of Overpayment

STATEMENT OF THE CASE:

Hy-Vee filed a timely appeal from the February 20, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 14, 2006. Claimant Dawn Roberts participated. David Williams of TALX UC eXpress represented the employer and presented testimony through Store Manager Tim Flaherty, Pharmacist Dick Cornelius, and Accounting Coordinator Tanya Dadifman. The administrative law judge took official notice of Agency administrative records regarding benefits dispersed to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Roberts was employed by Hy-Vee as a full-time pharmacy technician from October 2, 2000 until January 24, 2006, when Store Manager, Tim Flaherty, discharged her.

The final incident that prompted the discharge occurred on Sunday, January 22, 2006. Ms. Roberts was not scheduled to work that day. Ms. Roberts went to the pharmacy to have a prescription filled. The cost of the prescription was \$8.79. While Pharmacist Dick Cornelius filled the prescription, Ms. Roberts entered the pharmacy work area through a locked door and went to a backroom area of the pharmacy. Ms. Roberts' ostensible purpose in entering the pharmacy was to get a graham cracker for her 18-month-old granddaughter. As soon as Mr. Cornelius was done filling the prescription, he went to the backroom area, where he discovered Ms. Roberts going through a money bag. The pharmacy offers a delivery service and the money bag was used by the delivery drivers to store payments for prescriptions. The delivery driver would put the money in the bag. An accounting coordinator would then collect the money from the bag and reconcile the amount of money in the bag with the cost of the prescriptions delivered. Ms. Roberts had no legitimate reason to be in the money bag on January 22.

On Monday morning, January 23, Pharmacist Dick Cornelius asked the accounting coordinator whether the money in the bag matched the cost of prescriptions delivered over the weekend. It did not. The bag was short \$10.00. Mr. Cornelius reported Ms. Roberts' conduct of the previous day to Store Manager Tim Flaherty. When Ms. Roberts arrived for her shift, Mr. Flaherty questioned Ms. Roberts about her conduct the previous day. Ms. Roberts asserted that Mr. Cornelius had asked her for assistance while she had been at the store getting her prescription filled and that this was the reason why she had gone into the backroom of the pharmacy. Ms. Roberts admitted to having been in possession of the money bag and its contents on January 22. Mr. Flaherty suspended Ms. Roberts for the day, pending further investigation, and made arrangements to meet with Ms. Roberts the following day at the scheduled start time of her shift. Mr. Flaherty spoke again with Pharmacist Cornelius, who contradicted Ms. Roberts' assertion that he had asked her for help and that this was the reason why she had been in the backroom of the pharmacy. On January 24, Mr. Flaherty discharged Ms. Roberts for mishandling the employer's funds.

Ms. Roberts established a claim for benefits that was effective January 22, 2006 and has received benefits totaling \$1,249.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Roberts was discharged for misconduct in connection with the employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The preponderance of the evidence in the record indicates that on January 22, Pharmacist Dick Cornelius caught Ms. Roberts in the act of stealing from the employer. Ms. Roberts then misrepresented to Store Manager, Tim Flaherty, her reason for being in the backroom of the pharmacy and in possession of the money bag. The preponderance of the evidence in the record establishes that Ms. Roberts engaged in willful and wanton disregard of the employer's interests by misappropriating store funds.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Roberts was discharged for misconduct. Accordingly, Ms. Roberts is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Roberts.

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 benefits Ms. Roberts has received constituted overpayment. Ms. Roberts must repay \$1,249.00.

DECISION:

The Agency representative's decision dated February 20, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged. The claimant is overpaid \$1,249.00.

jt/kkf