

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULINE A ALDINI
Claimant

APPEAL NO: 11A-UI-14779-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/28/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 4, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account exempt from charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Alice Rose Thatch represented the employer. Angie Jensen, the human resource manager, and Anthony Guzzi, the bakery manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late February 2011 as full-time bakery designer. Guzzi supervised the claimant. After the employer hired the claimant, she received a copy of the employer's guidelines. One of the guidelines requires employees to remember they are to work as efficiently as possible.

The employer gave the claimant a written warning on May 27 because a cake order had not been completed by 4:30 a.m. (Employer Exhibit One.) The claimant had not seen this cake order when she left work. No one told her a cake order had been called in and was to be done by 4:30 a.m. the next day. The claimant was not scheduled to work until 8:00 a.m. The other decorator came to the store and decorated the cupcakes in this order. The claimant understood the customer was happy with the way the cupcakes had been decorated even though they had been delivered late. The claimant's written warning indicated the customer was not happy.

The employer talked to the claimant on June 3, when a wedding cake was not done on time. (Employer Exhibit Two.) The claimant ordered supplies for this cake and did not think anything about it because the other cake designer was scheduled to decorate the cake. The wedding

cake was not completed on time. Guzzi talked to the claimant about ways to communicate more effectively with her peers about upcoming cake orders.

The employer gave the claimant another written warning on July 8 when a cake was not done. The claimant had taken the order and initially filed the order to be done on Tuesday. Either someone moved the order to Wednesday or the claimant overlooked the order. After this problem occurred, the bakery department implemented a new procedure so this kind of problem did not happen again. (Employer Exhibit Three.)

Even though the employer gave the claimant two written warnings and counseled her on June 3, the claimant understood the primary reasons for the warnings and counseling was for communication issues. The claimant understood communication in the bakery department had been resolved. The claimant had no understanding her job was in jeopardy.

On October 13, the claimant and the other cake designer decided the claimant would work on a large wedding cake order that day and the other employee would decorate the special order cakes. The other cake designer and the store manager told Guzzi to watch the claimant to see how efficiently she worked. That day the claimant answered phone calls and helped customers in addition to decorating the wedding cake. She also completed the three-tiered wedding cake and large sheet cakes. Guzzi noted the only task the claimant completed was the wedding cake order. He believed she should have completed the wedding cake in three to four hours instead of the eight hours that she worked on it. Since the claimant took all day to finish the wedding cake, the other decorator was unable to decorate all the special order cakes. There were three cakes left to decorate the next day.

On October 18, the employer discharged the claimant for unsatisfactory job performance. The employer decided to discharge the claimant based on the previous warnings she received and because she did not work efficiently and did not get her work done in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 discharged the claimant for business reasons. After the employer gave the claimant a written warning on July 8, there were no problems of a similar nature. The claimant had no understanding her job was in jeopardy. Even if the claimant worked too slowly and did not perform her job to the employer's standards, the evidence does not establish that she intentionally failed to perform her job efficiently and in a timely manner. The claimant worked to the best of her ability. She did not commit work-connected misconduct. As of October 16, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's November 4, 2011 determination (reference 03) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 16, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css