

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AIRRIANNE M BURNS
Claimant

APPEAL NO: 13A-UI-04665-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/24/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 15, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Julia Church represented the employer. Greg Wery, the store director, and Mike Landuyt, the manager of merchandising, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2004. She worked full time as the manager of the health and beauty care department and the garden center. During her employment, the claimant asked for assistance or authorization to work more hours so she could do her job in both departments. The employer did not grant the claimant's request. After the claimant's employment ended, the employer hired two people, one to manage the health and beauty care department and one to manage the garden center.

During her employment, the employer talked to the claimant about some performance issues concerning timeliness of an order and inventory control. The employer discharged the claimant on March 26, 2013, because the feet for the garden center fencing had been stolen.

When the garden center was dismantled in July 2012, Wery asked the claimant three times to make sure the garden center supplies were secure. The claimant assured Wery this would be done. The claimant stacked the feet on a pallet and someone else took them outside by the Wine and Spirits Department. The pallet could not be locked when it was outside. The claimant did not know the employer had secured the feet in a trailer the previous year.

When the employer started to put together the garden center fencing in late March 2013, the employer discovered the feet had been stolen. The value of the stolen property was \$480. The employer discharged the claimant on March 26, 2013, for failing to secure the feet, a garden center supply, as the store manager had asked her to do three times in July 2012. (Employer Exhibit One.)

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant did not realize the feet for the fencing had been secured in a trailer the summer of 2011. When she assured Wery she would secure the garden center's supplies in July 2012, she believed the supplies had been stored as they had in previous years. The claimant did not intentionally fail to properly secure the feet for the garden center's fencing. She had no idea anyone would take the pallet stacked with the feet. Her failure to lock up the feet amounts to an isolated incident of negligence. She did not commit work-connected misconduct.

The employer discharged her for justifiable business reasons, but the evidence does not establish that the claimant intentionally disregarded the employer's interests. She performed her job to the best of her ability. As of March 24, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 15, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. The claimant's isolated incident of negligence does not amount to work-connected misconduct. As of March 24, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs