

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAMAR A TRIPLETT**  
Claimant

**APPEAL NO: 06A-UI-08664-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/06/06 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's August 25, 2006 decision (reference 01) that concluded Lamar A. Triplett (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2006. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Chris DeSaulniers and Jim Fitzgerald. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 6, 2004. He worked full time as a clerk in the meat department of one of the employer's Des Moines, Iowa stores. His last day of work was August 7, 2006. The employer discharged him on that date. The reason asserted for the discharge was unauthorized discounting of store product.

The meat department practice is to daily prepare freshly ground chuck to display in the full service meat counter. As of July 28, 2006, the regular price for the fresh-ground chuck was \$2.88 per pound. The further practice was that each morning by 8:00 a.m. the staff was to pull the ground chuck from the display case that had been prepared the prior day, package it, and place the packages into the self-service meat case, reducing the price to \$1.99 per pound.

During the late morning of July 29 a call came into the department which was first answered by another clerk. The customer asked to speak to the claimant, and when he took the call, the customer asked if there was any ground beef that might be marked down that day. The employer asserted that the customer had asked the first clerk the same question and had been told "no" before asking for the claimant; however, when the claimant took the call he had no knowledge that the customer may have asked the first clerk the same question and had been

told “no.” The claimant looked into the full service meat case and saw that there was some ground chuck that had been prepared the prior morning but had not been pulled and repackaged by 8:00 a.m. that morning. He observed that the meat had become more discolored than it would have had it been repackaged by 8:00 a.m., and was brown on both the top and the bottom. He therefore determined that it would not be appropriate to sell it for \$1.99 per pound, and told the customer that he would price it at \$.99 per pound. The customer replied that she would take five pounds and have a family member pick it up that afternoon; the transaction for the purchase of the five pounds at \$.99 per pound occurred at 4:38 p.m. While the claimant knew the customer as she was a family member of another employee of the store, there was no showing that there was any special preference given to that customer due to that familiarity. In fact, after removing the five pounds for the customer, there was a little over a pound of the meat left; which the claimant repackaged and placed it into the self-service meat case also priced at \$.99 per pound.

The claimant had not received any prior disciplinary actions; however, on July 27 there had been a discussion regarding the proper procedure for discounting meat. The other clerk had been disciplined as a result of an incident where she marked down an expensive cut of beef steak to a minimal price comparable to ground beef without approval and without adequate justification. In the meeting the employees were told that only the three managers could approve discounting meat prices. The claimant understood this to apply primarily to situations where there was a change in the price such as the incident that had occurred where an expensive cut was reduced to the price of inexpensive ground beef. When the customer request was made on July 29, none of the three managers were available, and the claimant believed that as the more senior employee on duty that he still had discretion to prevent a complete loss of sale due to spoilage by selling what appeared to be perishing product for about half of what it would have been priced at had it been repackaged several hours prior.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his discounting of the ground beef after discussion of the incident with the other employee. The employer has not established that the claimant's misperception that he still had authority in the absence of the managers to discount damaged product and making the price reduction in this case was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Therefore the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's August 25, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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