

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAYNE A COCHRAN
Claimant

APPEAL NO. 08A-UI-06551-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/08/08 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 14, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 30, 2008. The claimant participated personally. The employer was represented by Tim Speir, Hearings Representative, and participated through Brenda Everts, Human Resources Manager, and Peter Lewison, Produce Worker.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 11, 2008, as a part-time produce clerk. The claimant signed for receipt of the employer's handbook on March 11, 2008. On May 31, 2008, the claimant was entitled to a 25 minute on premises break. The claimant left the premises for approximately 64 minutes without punching the time clock. He recognized that he had not punched out later when he ended his shift. The claimant's comings and goings were noted by his co-worker and it was recorded on a surveillance camera. The claimant did not notify the employer of his activity or try to correct his timecard.

On June 5, 2008, the employer met with the claimant about the incident. The claimant at first denied and later admitted leaving the premises without clocking out for longer than his approved break time. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees when he attempted to be paid for time not spent at work. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The July 14, 2008, reference 03, representative's decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css