

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA M TAYLOR
Claimant

APPEAL NO. 08A-UI-11581-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/16/08 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Samantha Taylor, filed an appeal from a decision dated December 3, 2008, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 23, 2008. The claimant participated on her own behalf. The employer, Hy-Vee, participated by Manager of Store Operations Chuck Ireland, Assistant Manager Twanna Sampson and was represented by Unemployment Insurance Services in the person of Derek Holland. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Samantha Taylor was employed by Hy-Vee from April 11, 2007 until November 10, 2008 as a part-time cashier. On November 10, 2008, Assistant Manager Twanna Sampson was working at the front end where the cashiers were. She saw a regular customer go through Ms. Taylor's line with a 20 ounce soda pop. The customer then came back a short time later with two rotisserie chickens, two bags of chips and a soda pop. Because the customer was behind another customer with a very large order, Ms. Sampson asked her if she wanted to step over to another lane to get faster service. The customer, who was a personal friend of Ms. Taylor's, said she did not want to move because she was waiting for her sister to arrive to pay for the grocery items she had.

Ms. Sampson was suspicious and kept a close eye on the claimant's checkout line and watched the customer's items being rung up and the customer leave the store with the chickens, the chips and the soda pop. The assistant manager then went to the store computer and called up the transaction from Ms. Taylor's line for the time in question. The transaction showed the customer had only been charged for a bag of chips. Ms. Sampson then checked the claimant's register to see if there were coupons in the drawer which might explain the fact no other items were rung up, but there was nothing.

The matter was brought to the attention of Manager of Store Operations Chuck Ireland who also checked the store computer for any transaction within a hour of the time the transaction in question occurred, to see if anyone else had purchased the chickens in another department. No chickens had been purchased at any register in the store during that time frame. Ms. Taylor was asked to come to the office where Mr. Ireland questioned her. She declared she had rung up the chickens but when she was shown the receipt, changed her story to say the customer's sister had purchased the chickens elsewhere in the store. When Mr. Ireland told her the computer showed no purchase of any rotisserie chickens for up to an hour before this customer was checked out, she had no response.

Ms. Taylor was discharged by Mr. Ireland for violation of the company policy prohibiting the unauthorized removal of store property and designation discharge for anyone who does not report such activity.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for not charging her friend with groceries brought through her checkout line. Her explanation that the chickens had been paid for earlier at another register is not credible as this possibility was investigated by the employer before the decision was made to discharge Ms. Taylor. In addition the claimant maintained at first she had charged the friend

for the chickens then voided the transaction when the friend insisted they had already been paid for. There is no evidence of any "void" on the register receipt or in the store computer.

The claimant was discharged for knowingly allowing a person to remove the food from the store without paying for them. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of December 3, 2008, reference 02, is affirmed. Samantha Taylor is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css