

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HIEP H NGUYEN**  
Claimant

**APPEAL NO. 13A-UI-02187-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 15, 2013 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 16, 2013. Claimant participated through interpreter, Phung Nguyen. Employer participated through store director, Dan Vondrak and personnel manager, Estella Ebner and was represented by Aaron Heyer of Corporate Cost Control. Employer's Exhibit 1 (fax pages 3 through 39) was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Chinese cook for three years and was separated from employment on December 15, 2012. The employer discovered on December 14 that claimant scanned his fuel saver program card on multiple customer purchases from December 5 through December 15. He used the card to get significant discounts on personal purchases of gas, which the employer considers theft. He did not ask a supervisor if he was allowed to do this. Vondrak showed him the documentation and he admitted the conduct. He did not ask questions about the policy when it was provided and explained and did not ask for an interpreter. (He also answered or responded to ALJ questions in advance of the interpreter a few times.)

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 presented substantial and credible evidence that claimant improperly used his fuel saver card for personal use to the detriment of the employer and multiple customers, which is disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The February 15, 2013 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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