

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY HAIFLEY
Claimant

APPEAL NO: 08A-UI-03750-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03-16-08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 1, 2008. The claimant participated in the hearing. Jen Book, Director; Jim Raes, Manager of Perishables; Stacie Nichols, Manager/Store Operations; and Jeff Oswald, Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct store delivery coordinator for Hy-Vee from October 10, 1998 to March 19, 2008. She was responsible for making sure that the amount and cost of the products coming through the back door are checked in with delivery sheets and matched up to invoices (Employer's Exhibit One). Some of the items were not being checked in properly and the employer was losing money. On January 22 and 28, 2008, the employer talked to the claimant about procedures to verify with the vendors because some invoices were not being done. On February 1, 2008, the claimant received a final written warning after bread was not checked in correctly (Employer's Exhibit Two). On February 15, 2008, the claimant received another final written warning after she failed to check in beer February 11, 2008, but just signed the invoice without verifying the physical count (Employer's Exhibit Three). She was told she would be terminated upon her next offense. On February 20, 2008, a deal sheet was not matched with the invoices that showed up on the direct store delivery sheet. The employer went through batches of invoices and missing deposits where the case costs were not punched in correctly and allowances were incorrect which were the claimant's responsibilities. The claimant testified that the last month her job duties were new to her and she did not have any training but tried to do the best she could. She had worked with the invoices previously but not

the allowances and did not know how to do the allowances. Although she had received the consultation forms she did not know her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979). While the claimant was familiar with the invoicing system, she did not understand how to do the allowances and had not been trained for that duty but performed to the best of her ability. Although the claimant did make errors, under these circumstances the administrative

law judge cannot conclude that the claimant's actions were intentional and consequently no misconduct has been established. Benefits are allowed.

DECISION:

The April 9, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs