

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE R MCKERN
Claimant

APPEAL NO. 14A-UI-06751-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/08/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michele McKern (claimant) appealed a representative's June 27, 2014 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was scheduled for July 22, 2014. The claimant participated personally. The employer was represented by Dane Swenson, Hearings Representative, and participated by Buffy Bosch, Assistant Manager of Perishables; Patricia Plummer, Server of Chinese/Italian Food; and Jeremy Drummond, Cash Accountability Backup Coordinator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 December 8, 2012 as a part-time clerk in Italian food. The claimant signed for receipt of the employer's handbook on December 8, 2012. On April 9, 2014 the employer issued the claimant a written warning for leaving early without asking for permission from a manager. On May 19, 2014 the employer issued the claimant a written warning for being absent five out of six Mondays and for leaving early without speaking to management. The employer notified the claimant that further infractions could result in termination from employment.

On June 9, 2014 the claimant was scheduled to work from 8:00 a.m. to 3:00 p.m. with a 25-minute break. If the claimant left the property for her break, she was supposed to clock out. On June 9, 2014 the claimant did not punch the time clock when she arrived at 9:00 a.m. She left the property at 1:00 p.m. and did not punch out. She returned at 1:55 p.m. and did not punch in. She left for the day at 3:02 p.m. and did not punch out. On June 10, 2014 the cash accountability backup coordinator asked the claimant what hours she had worked on June 9, 2014 and the claimant told the coordinator she worked from 8:00 a.m. to 3:02 p.m.

She signed an edit sheet on June 10, 2014 to confirm those hours. On June 12, 2014 the employer terminated the claimant for falsifying her June 9, 2014 hours.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

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). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 27, 2014 (reference 01) 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

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