

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E JEFFRIES
Claimant

APPEAL NO. 13A-UI-06424-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/05/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 24, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 12, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, John Singer, and a witness, Tarah Diop. Julia Church participated in the hearing on behalf of the employer with a witnesses, Brad Alberts, Kevin Kelly, and Tim McCracken. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time as a meat clerk from April 27, 2010, to May 9, 2013. She was informed and understood that under the employer's work rules, employees were not allowed to discount products to employees, customers, or themselves or to check out family members. The claimant understood this policy to mean checking someone out at cash register and did not understand it included waiting on a family member at the meat counter. She had witnessed other employees including supervisors wait on family members.

On May 9, 2013, the claimant's daughter came to the meat counter and ordered catfish fillets. The claimant weighed and packaged two filets and prepared a label with the correct price for the package. The daughter went to the front cash register and paid for the product.

A coworker, Marlon Sevilla, with whom the claimant had had previous conflicts reported to management that the claimant had weighed one filet and then packaged five to eight filets and put a label for the one filet on the package. This report was untrue.

When the claimant was questioned about this, she stated that she had packaged two filets for her daughter. She did not admit that she had prepared a label for one filet. The employer discharged the claimant for violating the policy of discounting products and checking out a family member.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence is undercut by Sevilla—who was the person who claimed the claimant packaging several catfish filets—not being at the hearing and inexplicably not available when the employer tried picking him up to participate in the hearing. The claimant presented credible testimony about why Sevilla would report untruthfully that she had done something dishonest. The claimant's testimony outweighs the employer's evidence.

No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 24, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs