

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA K MCCARTY
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-11573-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Pamela McCarty (claimant) filed an appeal from the October 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged her for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2015. The claimant, Pamela McCarty, participated on her own behalf. The employer participated through Store Director Dan Anderson, Manager of Perishables Evelyn Trujillo, and Floral Manager Michelle Salmon and was represented by Bruce Burgess of Corporate Cost Control, Inc. Employer's Exhibit 1 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: The claimant was employed full-time as a Floral Designer beginning August 25, 2004, and was separated from employment on August 21, 2015, when she was discharged. The claimant was one of three full-time employees who, along with one part-time employee, were responsible for staffing the Floral Department from 7:00 a.m. to 8:00 p.m. The claimant worked five eight-hour shifts a week and was often scheduled to work alone.

On July 7, 2015, the claimant received a consultation form regarding an incident on July 4, 2015, when she left the store early after being told by management she needed to finish her shift which ended at 8:00 p.m. The same day, the claimant received another consultation form regarding the incident on July 5, 2015 when she left early again after being asked to stay by management. As part of the warnings, she was told further incidents of leaving early would result in suspension or termination. The same day she received the warnings, the claimant left early without management approval. On July 14, 2015, the claimant was given a three-day suspension for leaving early on July 7, 2015. She was told she had left customer orders unfilled and that any further incidents of leaving early without manager approval would result in termination.

On August 18, 2015, the claimant arrived late for her shift and left early without management approval. She felt she had done all of her work and there was someone else working with her that day. The next day the claimant worked was August 21, 2015. She met with Store Director Dan Anderson and Manager of Perishables Evelyn Trujillo who terminated her employment for failing to work her entire shift and leaving early without management approval.

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. Benefits are denied.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does

not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The employer has presented substantial and credible evidence that claimant continued to leave early without management approval after having been warned. The employer's instruction that the claimant works her entire shift or obtains management approval before leaving early is reasonable. The claimant understood her job was in jeopardy and she still left early without management approval on August 18, 2015. The claimant had no explanation as to why she did not obtain management approval on that day before leaving. The employer has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are denied.

DECISION:

The October 5, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs