

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL M HALTER
Claimant

APPEAL NO. 10A-UI-06185-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/21/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joel M. Halter filed a timely appeal from an unemployment insurance decision dated April 13, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Sioux City, Iowa June 21, 2010 with Ms. Halter participating and being represented by Julie Schumacher, Attorney at Law. Robin Taylor testified on her behalf. The employer, Hy-Vee, Inc., chose not to participate in the hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Joel M. Halter was employed as a certified pharmacy technician by Hy-Vee, Inc. from September 2004 until she was discharged March 19, 2010. The sole incident leading to the discharge occurred on March 17, 2010. While joking with co-worker, Robin Taylor, Ms. Halter tapped Ms. Taylor on the cheek. This was reported to company management by individuals other than Ms. Taylor. Ms. Taylor was interviewed by the store manager and pharmacy manager on March 19, 2010. She told them that this was not a case of harassment by Ms. Halter. Ms. Halter was discharged in any event. On the following day, Ms. Taylor told company management that she would testify for Ms. Halter in an unemployment insurance case. She was told that there would be consequences if she did so. After Ms. Halter's discharge but prior to the date of this hearing, Ms. Taylor was demoted and reassigned from the pharmacy department.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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 proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. The evidence submitted on behalf of the claimant does not establish misconduct.

The administrative law judge is concerned at the allegations in this record of intimidation by the employer aimed at a co-worker who had stated that she would participate in unemployment insurance proceedings on behalf of the claimant. The Supreme Court of Iowa has ruled that it was a discharge contrary to public policy when an employer discharged an individual because of filing a claim for unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated April 13, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs