IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAUL W MATTHEIS
Claimant

HY-VEE INC
Employer

APPEAL NO. 11A-UI-07827-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/08/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Paul W. Mattheis (employer) appealed a representative's June 3, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on July 12, 2011. The claimant participated in the hearing. Alice Rose Thatch of Corporate Cost Control appeared on the employer's behalf and presented testimony from two witnesses, Pat Lamb and Connie Heidemann. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on or about September 1, 2005. Since about October 27, 2008, he worked full-time as an assistant manager at the employer's Cedar Rapids, Iowa store. His last day of work was May 13, 2011. The employer discharged him on that date. The stated reason for the discharge was violation of the employer's policies on integrity.

On or about January 24, 2011, the claimant had gotten off work and left the store. As he was leaving the employer's customer parking area, he found a roll of money on the ground, in the amount of $160.00. He then went to an automatic teller machine (ATM) in the store and deposited the money in his account. He did not report the found money to the employer.

The person who lost the money reported the loss to the police. The police detected the deposit into the claimant's bank account from the ATM near where the money had been lost, matching the amount of money claimed to have been lost. They were then able to track the serial numbers on the money deposited by the claimant to the serial numbers identified by the person who reported the loss. A criminal charge of fifth degree theft was filed against the claimant on

January 28, 2011, a simple misdemeanor. He pled guilty to the charge, and was sentenced on April 29.

The employer had some knowledge something was going on in January in that the police had inquired of the employer whether the claimant worked there; however, the employer did not know the reason for the inquiry and did not know of the filing of the charge until April 28. The employer discussed the matter with the claimant at that time and indicated that this could result in action against the claimant if a criminal conviction did result. On May 13 the employer was able to verify the record of the conviction and discharged the claimant.

The employer's code of conduct requires employees to behave with integrity, and provides that in the event of a criminal conviction, termination could occur. The employer's store handbook specifically requires employees to turn in lost money. The claimant was aware of these policies, but did not consider that they applied as the money was found outside the store on the edge of the employer's property and he was off-duty.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). However, the court has concluded that some off-duty conduct can have the requisite element of work connection. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, it has been found:

In order for an employer to show that is employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

> [T]hat the employee's conduct (1) had some nexus with her work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996); In re Kotrba, 418 N.W.2d 313 (SD 1988), quoting Nelson v. Department of Employment Security, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77–78.
The claimant's conduct did have a nexus with his work, as he found the money because of having been at work and it being on the edge of the employer's property, as well as his returning to the store to deposit the money in an ATM in the employer's store. Under such circumstances, the conviction, particularly of a management-level person, for failing to turn in the money could injure the employer's interests, and was in violation of policies of which the claimant was on notice. The conduct therefore shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 3, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 13, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw