

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRE' E DEMARBIEUX
Claimant

APPEAL NO. 10A-UI-06510-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/04/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 28, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 24, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Shanda Demarbieux. Tim Speir participated in the hearing on behalf of the employer with witnesses, Dennis Villhauer, Tesla Park, and Bernice McLain. Exhibit 1 was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a store clerk from April 4, 2008, to March 18, 2010. Her supervisors included the store manager, Dennis Villhauer, and the assistant store manager, Bernice McLain.

On March 8, 2010, Villhauer warned the claimant and reduced her hours after she had a hostile confrontation with McLain, including directing profanity at McLain. The warning indicated the claimant's friendliness toward customers and other employees had gone downhill.

Around March 24, the claimant prepared a petition aimed at getting Villhauer to restore her hours. The petition was for Hy-Vee customers to sign to attest to the fact that the claimant was friendly and courteous.

On March 26, the claimant decided to stand by the front door to the Hy-Vee store and approach customers about signing her petition. She did not think there was anything wrong with what she was doing because it was her day off and no signs are posted prohibiting trespassing or loitering outside the Hy-Vee store. She spent several minutes approaching customers and collecting signatures on the petition. She told customers her hours have been cut and she was trying to get them back. McLain was the manager on duty that day. Some customers informed McLain about what the claimant was doing.

McLain went outside the store and informed the claimant that she needed to leave. The claimant refused to leave because there were no signs posted regarding trespassing or loitering. McLain then called Villhauer to find out what to do. Villhauer instructed McLain to tell the claimant if she did not leave, McLain would call the police. McLain then informed the claimant about what Villhauer had said and again said she needed to leave or the police would be called. The claimant again refused to leave.

McLain called the police. When the police officers arrived, they told the claimant that she would have to leave, but could go across the street off Hy-Vee property to collect signatures. The claimant complied with the police officers' instructions and went across the street and approached vehicles and persons walking by to collect signatures on the petition.

Villhauer requested that the claimant come in to talk about her hours. When the claimant came in on March 29, 2010, Villhauer discharged her for conduct unbecoming an employee, insubordination, and failing to recognize the authority of the supervisor.

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 section 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 claimant's conduct on March 26 was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Whether she was violating any law or not by soliciting signatures in front of Hy-Vee isn't the point. Informing customers outside the store that she had been unfairly disciplined could obviously damage the employer's interests and reputation. Whether she was off duty or not also isn't the point. She was outside the store for a work-related reason and was required to follow the instructions of her supervisor. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 28, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs