

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORRINE M BAKER
Claimant

APPEAL NO. 13A-UI-02717-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02-03-13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 4, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 11, 2013. The claimant did participate. The employer did participate through Dan Goshorn, Store Director; Jen Kopriva, Assistant Vice-President of Operations; Sam Deornellas, Manager of General Merchandise; Sloan Foster, Manager of Store of Operations; and was represented by John Fiorelli of Corporate Cost Control. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at a Hy-Vee Drug Store as a customer service representative full time beginning December 21, 2009 through February 6, 2013 when she was discharged. The employer began a new "fuel saver card" program in December 2012. Any customer wishing to take advantage of the program was required to sign up at which time they would be assigned a number and would be issued a card to present at the time of purchase of groceries that would allow them to accumulate the fuel saver points that could be used to purchase gasoline at a reduced price. Only customers who joined the fuel saver program are entitled to earn and redeem the points. Fuel saver points earned by customers are not transferrable. As part of their regular employee rules and practices no Hy-Vee employee is ever allowed to ring up their own transactions.

The employer utilizes a sophisticated computer tracking system to help them spot theft or questionable transactions. On February 6 the loss prevention office notified Store Manager Mr. Goshorn that at least four questionable transactions involving the claimant had taken place on February 4, two days prior. Mr. Goshorn investigated immediately by reviewing with Vice-President of Operations Ms. Kopriva all of the transactions, including reviewing video of the transactions. During the videos, which were shown to the claimant, it was clear that the claimant was taking her own fuel saver card from her pocket and swiping it to obtain fuel saver

points earned by a customer purchasing a qualifying product. The claimant alleges that the four customers that she took fuel saver points from all gave her permission to take their points. The claimant also testified that at least one of the customers, Mary was not a part of the fuel saver program as she did not even own a car. A customer who is not part of the fuel saver program is not entitled to any "points" and thus could not give the claimant permission to take points that she herself had no right to. Prior to engaging in these questionable transactions the claimant never approached any member of management and asked them if what she was doing was acceptable. The claimant herself as a member of the program should have known that she was not allowed to "give" or "take" anyone else's points. During her meeting with Mr. Goshorn and Ms. Kopriva the claimant apologized for her behavior.

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.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's argument that she thought she could take points from customers as "gifts" is simply not believable. As a member of the program the claimant knew or should have known that points were not transferrable. As an employee she knew or should have known that she was not allowed to ring

up in any way her own transactions, including swiping her own fuel card to obtain points she did not earn. The claimant did not ask the employer about the procedure because she knew it was not allowed. The claimant's actions amount to theft from the employer and are sufficient substantial misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The March 4, 2013 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs