

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH SCHOON-LOWRY
Claimant

APPEAL NO. 11A-UI-03235-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/23/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Deborah Schoon-Lowry (claimant) appealed an unemployment insurance decision dated March 14, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2011. The claimant participated in the hearing. The employer participated through Caleb Cork, human resources manager, and Alice Rose Thatch, employer representative. Employer's Exhibits One through Four were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time wine and spirits clerk from August 30, 2010 through January 31, 2011, when she was discharged. She had previously worked for Hy-Vee, Inc. Caleb Cork, the human resources manager, was working as a cashier at the front of the store on January 31, 2011. He testified that it was a snow scare that day, which meant that the store was extremely busy and the employer was understaffed, so numerous employees were working at the front of the store. Mr. Cork stopped working as a cashier but began to bag groceries when he heard a customer complaining to the claimant that there was not enough help. Mr. Cork heard the claimant respond by stating that the customer could always shop at Fareway, which is a competitor of the employer.

Mr. Cork asked the shift manager to replace the claimant with another cashier and he called her to the office to discuss what happened. When he first asked her about the incident, the claimant made no mention of what she had said. When she was subsequently asked, the claimant admitted what she had said to the customer. The employer has a policy which prohibits putting

the employer in a bad light and her actions were in violation of this policy. The claimant was already on a final warning, so she was discharged at that time.

The claimant's final warning was issued to her on November 22, 2010 for selling alcohol to a minor. On November 22, 2010, a customer came in to purchase alcohol and the claimant asked for the ID but the date was covered. The claimant then just asked the customer what the date was and the customer told her a fake date. Cashiers are responsible for checking all identification cards and if the card cannot be seen, cashiers are supposed to ask the customer to take the ID out of the wallet. A final warning was issued since the claimant already had multiple consultations regarding her failure to follow policy.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was on a final warning as of November 22,

2010 and she was discharged on January 31, 2011 for inappropriate comments to a customer. The human resources manager heard the comment himself and the claimant admitted making the comment at the time of her discharge, although she now denies it. The employer has met its burden. The claimant's conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 14, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw