

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARRELL W DEMPSTER JR**  
Claimant

**APPEAL NO. 07A-UI-10936-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10/07/07 R: 01**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge  
Section 96.5-2-b, c – Gross Misconduct

**STATEMENT OF THE CASE:**

Darrell W. Dempster, Jr. (claimant) appealed a representative's November 14, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer), and that the separation was due to gross misconduct. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on December 11, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-10937-DT. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that David Williams of TALX Employer Services would participate on behalf of the employer with several witnesses available for testimony. Prior to the hearing, the employer's representative submitted a Plea Agreement signed by the claimant on August 6, 2007. When the administrative law judge contacted Mr. Williams for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file plus the Plea Agreement. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 8, 1998. He worked full time as a customer service clerk. His last day of work was May 25, 2007. The employer discharged him on that date. The reason asserted for the discharge was theft of money from the employer. The claimant verbally admitted embezzling over \$17,000.00 in about the last eleven months.

Criminal charges were filed against the claimant in Plymouth County, Iowa. On August 6, 2007, the claimant signed a Plea Agreement in the proceeding that the claimant would plead guilty to Theft in the First Degree, a Class C Felony. The agreement included a provision that the claimant would pay \$10,000 in restitution to the employer by the time of sentencing, and he further agreed to make regular payments on the remaining balance of \$7,972.02 owed to the employer. The administrative law judge takes official notice of public court records indicating that the district court entered judgment accepting the Plea Agreement on September 4, 2007, and that based upon the Plea sentenced him on October 15, 2007.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons that constitute work-connected gross 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. 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 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 claimant's theft of money from the employer 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.

Iowa Code § 96.5-2-b-c 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:

b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

An "indictable offense" is an offense other than a simple misdemeanor. Iowa Code § 801.4. In terms of theft of property, in order to be at least a serious misdemeanor, the monetary value of the property taken must be at least \$200.01. Iowa Code § 714.2(4). The claimant has signed a written statement admitting to a violation that is more than an indictable offense. Further, with the entry of judgment and sentencing on the plea, the matter is considered as a conviction on the claimant's record. The statutory requirements for establishing gross misconduct have therefore been satisfied<sup>1</sup>. The claimant's wage credits earned through May 25, 2007 are cancelled.

#### **DECISION:**

The representative's November 14, 2007 decision (reference 01) is affirmed as modified with no effect on the parties. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 25, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is then otherwise eligible. The employer's account will not be charged. Further, the claimant was discharged for gross misconduct, and his wage credits from all employers prior to the date of discharge will be deleted.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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<sup>1</sup> The representative's decision originally provided as justification for the conclusion that the claimant was discharged for gross misconduct that "during your fact finding interview . . . you confirmed the report that you are personally responsible for approximately \$17,000.00 that was reportedly missing . . ." This verbal acknowledgment alone was insufficient under the statute to support a finding of gross misconduct, as the statute requires that there either be a showing of an actual conviction of a criminal offense or that the claimant has signed a written statement admitting to the commission of an act which would constitute at least a standard misdemeanor.