

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATRICIA R GREER
Claimant

APPEAL NO. 11A-UI-08290-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05-22-11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 17, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 18, 2011. The claimant did participate. The employer did participate through Stacy Dixon, manager of store operations; Mike Bauer, assistant store director; Lisa Harms, photo manager; and Bob Taylor, human resources manager, and was represented by Alice Rose Thatch of Corporate Cost Control, Inc.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general merchandise clerk, part-time, beginning September 27, 2008, through May 26, 2011, when she was discharged. The claimant was discharged for giving a customer a discount price she was not entitled too. The claimant had been trained on the proper procedures for giving customers the price of 12 cents per picture. Customers who bring in pictures to be developed on Tuesdays or Fridays are given the price of 12 cents per picture and must wait overnight to receive their pictures. On Wednesday, May 25, a customer, Shelia, brought in some pictures to be developed. Stacy Dixon, the claimant's supervisor, did not tell Shelia that she could receive the price of 12 cents per picture, as it was Wednesday. Ms. Dixon did tell Shelia that if she wanted to come back on either Tuesday or Friday, she could receive the price of 12 cents per picture at that time. Ms. Dixon also told Shelia that if she wanted to receive the discounted price of 12 cents, she would have to wait overnight for her pictures to be developed. After telling the customer the rules of the discounted picture processing, the claimant completed the rest of Shelia's transaction. In the photo log, the claimant indicated that she told the customer the photos could be picked up the next day. Shelia dropped off her camera card for developing at 12:26 p.m. and returned to pick up her pictures at 1:06 p.m. Shelia was not required to wait overnight for her photos. The claimant charged Shelia, who she knew from her church, only 12 cents per photo for a total of \$25.20 when in fact she should have charged her \$60.90 for the pictures. When asked by the employer why she had given the discount to Shelia, in front of Ms. Harms, Mr. Bauer, and Ms. Dixon the

claimant said it was because she knew Shelia from church. The claimant knew the way the 12 cent photo program worked and knew that she was not allowed to give the discount whenever she so chose. The claimant was discharged the next day for giving an unauthorized discount to a customer.

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 gave Shelia a discount to which she was not entitled. She also falsified the employer's photo log in an attempt to hide from the employer that she had given a discount to a customer she knew was not entitled to it. The claimant had been warned in March 2011 to follow the rules in issuing the discounted price of 12 cents per photo. Three managers heard the claimant tell them during her final meeting that she knew Shelia from church. The administrative law judge is not persuaded that the three employees lied. The claimant gave the discount and was dishonest at the hearing in an attempt to obtain unemployment insurance benefits. By giving a discount to a customer not entitled to one, the claimant deprived the employer of the income from the sales. Her

actions are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The June 17, 2011 (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/kjw