

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNA VELA
Claimant

HY-VEE, INC.
Employer

APPEAL 21A-UI-11407-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

On April 22, 2021, the claimant filed an appeal from the April 23, 2021, (reference 02) unemployment insurance decision that denied benefits based on a representative's determination that the claimant was discharged for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 12, 2021. Claimant Anna Vela participated personally. Employer participated through employer's representative Melissa Hill and Human Resources Manager, Danielle Grim. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 10, 2019. Claimant last worked as a part-time cashier. Claimant was separated from employment on November 20, 2020, when she was discharged for theft. The employer initiated an investigation into inconsistencies in funds collected in their bottle and can redemption section. The investigation revealed that the claimant had embezzled over a \$1,000.00. The employer notified the Davenport Police Department and charges were filed. The claimant admitted to stealing the funds during the hearing. The fact finder took official notice of Iowa Courts Electronic Document System and confirmed that the claimant had an open case for theft in Scott County case number AGCR412962 resulting from this incident.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

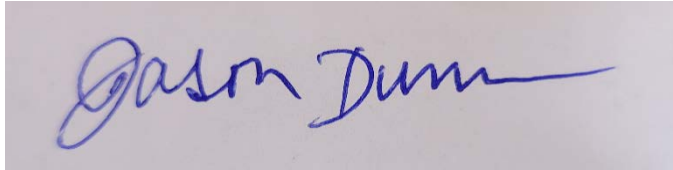
Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant acknowledged embezzling over \$1,000.00 from the employer, criminal charges resulted, and the claimant acknowledged the theft during the hearing. The claimant engaged in disqualifying misconduct. Benefits are denied.

DECISION:

The April 23, 2021, (reference 02) unemployment insurance 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

REMAND:

The issue of whether the claimant engaged in Gross Misconduct as defined by Iowa Code §96.5(2)b is remanded to the Benefits Bureau for review and processing.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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July 19, 2021
Decision Dated and Mailed

jd/scn