

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT D HILTABIDEL**  
Claimant

**APPEAL NO. 09A-UI-02408-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/21/08**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Hy-Vee, filed an appeal from a decision dated February 6, 2009, reference 01. The decision allowed benefits to the claimant, Robert Hiltabidel. After due notice was issued a hearing was held by telephone conference call on March 10, 2009. The claimant participated on his own behalf. The employer participated by Manager of Perishables Bob Hendrix, Night Shift Manager Shane Powers, and was represented by UIS in the person of Daniel Speir.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Robert Hiltabidel was employed by Hy-Vee from August 30, 2007 until December 19, 2008 as a part-time night stocker. He received the employer's policies regarding the use of controlled substances while on company property and/or company time.

In the early morning hours of December 19, 2008, the claimant was in his personal vehicle in the parking lot, taking his break with another employee. Night Stock Manager Shane Powers approached the car to ask Mr. Hiltabidel to "keep an eye" out for safety reasons when a female manager would be returning to her car in a few minutes. While there he observed the claimant holding a marijuana pipe in his hand, although there was no sign any controlled substances was being consumed at the moment.

Mr. Powers informed Manager of Perishables Bob Hendrix the next morning and the two of them summoned Mr. Hiltabidel to the office to discuss the incident. The claimant admitted to having the pipe but maintained it did not belong to him, he had just discovered it under the seat of his car when he was reaching for a screw driver he needed to start his vehicle. He had purchased the car just two months before from a private individual and had never looked under the seat. He was just holding the pipe when Mr. Powers had walked up to the car. The employer did not find the explanation to be credible and discharged the claimant under its zero tolerance drug policy.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 did not deny having the marijuana pipe but denied it was his, admitting only that he had just discovered it under the front seat of his vehicle. The employer based its decision to discharge on the company's drug policy, extending the presence of the pipe into the "use or possession of controlled substances" while on company property.

The administrative law judge acknowledges the claimant's explanation to be somewhat suspicious but the employer has failed to establish the claimant was actually using or possessing controlled substances in the workplace. It is possible the pipe could have been present in the vehicle without Mr. Hiltabidel's knowledge. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. The judge cannot find the employer has met that burden of proof in this case and disqualification may not be imposed.

**DECISION:**

The representative's decision of February 6, 2009, reference 01, is affirmed. Robert Hiltabidel is qualified for benefits, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs