

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA K NORDEN**  
Claimant

**APPEAL NO: 14A-UI-04815-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/13/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 1, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the May 29 and June 24 hearings. Matt Reilly, her attorney represented her. Bruce Burgess, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf. Greg Wery, Eric Breitback, Connie Heidemann and Kim Hanson testified on the employer's behalf. During the hearings, Employer Exhibits One through Five and Claimant Exhibit A were offered and admitted evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in May 1995. The claimant worked full time as the floral manager. The claimant does not remember receiving or being told about an April 15, 2008 email that described floral procedures concerning in-store electric charge cards or procedure to make down payments for wedding flowers. According to the policy, the employer's accounting department would set up an individual charge account and assign a temporary card that would be valid for varying months depending on the date of the wedding. When a customer made a deposit for a future flower order, the check was to be put in a designated place for the accounting coordinator. The deposit was then sent to the corporate office so the customer received a monthly statement showing the amount of their credit balance. On the day of the wedding, the flower order would be rung up and tax paid on the total floral bill. (Claimant Exhibit A.).

When the claimant's first daughter was married, she made deposits on wedding flowers the same way she did for her second daughter's wedding flowers. Wery became the store director just before the first wedding and did not comment about the way the claimant made advance payments for the wedding flowers.

When the claimant's second daughter was getting married in June 2014, the total cost of the flowers was unknown. The claimant started making down payments on these flowers in February 2013. The claimant made down payments on wedding flowers as follows:

Date	Deposit on Flowers	Total Paid	Cashier listed
February 28, 2013	\$100	\$107	V.S.
March 31, 2013	\$200	\$214	Claimant
April 26, 2013	\$250	\$267.50	Claimant
May 12, 2013	\$500	\$500	JM
July 21, 2013	\$200	\$200	Claimant

The difference in the amount of the deposit and total paid reflects taxes paid. (Employer Exhibits Three and Five.)

In mid-March 2014, Wery learned that the claimant had been making payments for her daughter's June 2014 wedding for about a year. He initially understood the claimant had a special deal on the flowers. When the claimant talked to Wery she explained that half the flowers were coming from Wery's store and half from her daughter's store. The claimant's daughter worked for another Hy-Vee store. At that time, the claimant had not placed an order or talked to Wery about the cost of the flowers. The claimant told him that her daughter's store director would charge her 10 percent over cost. Wery agreed to the same kind of arrangement. The claimant was told to give the employer receipts showing the down payments she had made on the flowers by March 28, 2014.

The claimant brought in three receipts for deposits on February 28, April 26 and May 12, 2013. The April 26 receipt indicated the claimant rang up the receipt, which is a violation of the employer's policy. (Employer Exhibit Two.) When the employer questioned the claimant about ringing up her own transactions, she understood she could not do this. The claimant explained that in the floral department an employee signs onto the register in the morning and everyone uses that employee's sign on when checking out customers for the rest of the day.

When the claimant returned from a vacation on April 10, the employer knew about the receipts and that some dates she paid taxes and other dates she made a deposit, she had not paid any tax. The employer concluded that because the claimant had not previously talked to Wery about her daughter's wedding flowers and because she did not follow the April 14, 2008 policy regarding floral deposits, she had no accountability for the wedding flowers. The employer did not know what the floral bill would amount to, but neither did the claimant. When the claimant did not use the employer's April 15, 2008 deposit procedure, the employer's profit and loss report was not correct because there was no sale to correspond with the claimant's deposit for the upcoming June 2014 wedding.

The employer discharged the claimant on April 10, 2014, after concluding she had no accountability as a department manager. The employer officially discharged the claimant because she improperly handled a personal transaction which included removing tax. (Employer Exhibit Four.)

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer did not establish that the claimant knew or understood about the April 15, 2008 policy regarding floral deposits. Even though the claimant's daughter followed the employer's floral deposit procedure, she worked at another store. As the floral department manager, the claimant should have known about the policy, but her testimony that she did not know about this policy is credible. The evidence establishes that the claimant did not know or understand she was doing anything wrong when she started making down payments for her daughter's June 2014 wedding flowers. The claimant made payments on flowers for the June 2014 wedding just like she had done for a previous wedding. A flower order had not been generated and flowers had not been ordered when the claimant was discharged. Once the claimant and her daughter knew how many floral arrangements or flowers were needed, a bill would have been made. Since taxes were not due until the day of the wedding or when flowers were delivered, the fact the claimant did not pay taxes on some of the deposits she made was not wrong. There were no taxes to pay on the down payments she made.

Even though the employer asserted the claimant could have taken flowers she did not pay for, I do not find this argument persuasive. The evidence indicates the claimant would have handled the June 2014 wedding flower order like she had done for her first daughter. After she knew how many flowers were needed, she would be billed accordingly. She would then have paid the bill and all taxes.

After the employer learned she had been making down payments for a year on a June 14 wedding and the claimant had not said anything to Wery, he did not trust her. The claimant used poor judgment when she did not talk to Wery to let him know what she was doing to make sure there were no problems, but she did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's May 1, 2014 determination (reference 01) is reversed. The employer established justifiable business reasons for discharging the claimant. The claimant did not follow all of the employer's policies, but she did not intentionally fail to follow the employer's

policies. She used poor judgment, but she did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css