

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDALL D DUMSTORFF**  
Claimant

**APPEAL NO. 11A-UI-08183-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 05/29/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Randall D. Dumstorff filed a timely appeal from an unemployment insurance decision dated June 20, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held July 14, 2011, with Mr. Dumstorff participating. Alice Rose Thatch, attorney at law, appeared on behalf of the employer, Hy-Vee, Inc. Manager of Store Operations Greg Rottinghaus and Pharmacy Manager Tim Goodhall testified.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Randall D. Dumstorff was employed as a pharmacy technician by Hy-Vee, Inc. from August 20, 2010, until he was discharged May 25, 2011. On May 21, 2011, Mr. Dumstorff reported to work although he was taking four types of medication for a dental problem. On that day, he gave an incorrect prescription to a customer. He acknowledged this while speaking with Manager Greg Rottinghaus on May 24, 2011, by telephone and in a face-to-face meeting on May 25, 2011, at which time he was discharged.

At a departmental meeting held on or about March 25, 2011, employees of the pharmacy department were told that they would be suspended at the first instance of giving an incorrect prescription to a customer and would be fired after the second such incident. On April 27, 2011, Mr. Dumstorff gave an incorrect prescription to a customer because he did not verify the customer's identification. The customer had the same name as the customer for whom the prescription had been filled.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Although misconduct is most often found in deliberate actions contrary to an employer's interests, it may also be found in repeated acts of carelessness or negligence. The evidence in this record establishes two careless errors in the space of less than a month. It also establishes a departmental meeting a month prior to the first error during which the consequence of such errors was discussed. Taken together, this evidence is sufficient to establish misconduct through repeated acts of carelessness. Benefits are withheld.

#### **DECISION:**

The unemployment insurance decision dated June 20, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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