

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLIE WALKER
Claimant

APPEAL NO: 11A-UI-13800-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09-11-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 17, 2011. The claimant participated in the hearing. Les Bruner, Human Resources Manager; Brian Mertes, Manager of Store Operations; and Paula Mack, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time deli manager for Hy-Vee from November 28, 2010 to September 15, 2011. On September 15, 2011, a full-time kitchen employee told Manager of Store Operations Brian Mertes that the claimant ordered and ate a breakfast sandwich without paying for it earlier that day as well as on September 13, 2011. Shortly after learning of the situation Mr. Mertes and Human Resources Manager Les Bruner met with the claimant about the September 15, 2011, incident and she admitted she ordered and ate a breakfast sandwich and intended to pay for it later in the day as she had done September 13, 2011, but she could not produce a receipt for her September 13, 2011, sandwich or tell the employer who checked her out. The employer's policy requires employees to order and pay for any food products before consuming the items or it is considered theft and the employer has a zero tolerance policy with regard to theft. The claimant admitted she was aware of the policy but consistently ordered and ate food prior to paying for it. The employer sent the claimant home for the remainder of the day and then terminated her employment for failing to pay for the breakfast sandwich before consuming it September 15, 2011.

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.

The claimant was aware that the employer's policy requires employees to pay for any food items prior to consuming them and as a department manager she had an even higher duty to follow the rules. Instead of doing so, the claimant admitted that she violated the policy several times by ordering food, eating it and then paying for it later in the day. The employer tried to find evidence that the claimant paid for her breakfast sandwich after ordering and eating it September 13, 2011, but was unsuccessful and she admitted she had not paid for the food prior to consuming it September 15, 2011. This was not an isolated incident of misconduct. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The October 13, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs