

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA HALL**  
Claimant

**APPEAL NO. 13A-UI-11800-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 09/01/13**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated October 11, 2013, reference 01, which held that Amanda Hall (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2013. The claimant participated in the hearing. The employer participated through Dave Bowling, Store Director; Debra Wesling, Accounting Coordinator; and Ajah Anderson, Employer Representative. Employer's Exhibit One was admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time cashier on August 25, 2008 but was most recently working as a full-time human resources manager at the time of her termination on August 30, 2013. She was discharged for time theft after she put in and approved her time records for eight vacation hours on August 16, 2013 even though she did not work that day and did not have any remaining vacation hours. The claimant was responsible for keeping track of employee's vacation hours.

Manager of Store Operations Greg Holiday informed Store Director Dave Bowling about the claimant's actions on August 18, 2013. Mr. Holiday advised Mr. Bowling that he personally spoke with the claimant about the unauthorized hours on August 17, 2013 but she contends he only mentioned it on the following week. The claimant did not work on August 18, 2013 but she worked on August 19 and 20, 2013 when she could have corrected her time card but failed to do so.

The paychecks were issued on August 23, 2013 and the store director waited until August 30, 2013 before taking any action. During the interim, the claimant failed to remedy the unauthorized pay and failed to notify anyone about the issue. Before meeting with her, the store director reviewed her raw time card punches to determine if there were any other time discrepancies. A raw punch is actually when an employee manually writes down the time as opposed to using the time clock. The director randomly chose three dates which had raw punches and found the times the claimant listed did not match the times she was seen leaving on the camera system. On June 5, 2013, she left at 1:20 p.m. but documented that she left at 12:45 p.m. On July 4, 2013, the claimant left at 12:06 p.m. but reported that she left at 12:45 p.m. and on August 22, 2013, she left at 1:05 p.m. but reported 1:30 p.m. as the time she left. Based on the three falsified time cards and paying herself for eight unauthorized vacation hours, the claimant committed time theft and was discharged as a result.

The claimant filed a claim for unemployment insurance benefits effective September 1, 2013 and has received benefits after the separation from employment in the amount of \$3,720.00.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for time theft. Although she admits she documented and was paid for eight unauthorized vacation hours, she contends that she merely made a mistake. That contention lacks merit however, because the claimant was the individual responsible for keeping track of all employees' vacation hours and it is doubtful she would have made a mistake on her own hours. However, even if it was an honest mistake, her failure to correct the mistake was intentional. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$3,720.00.

**DECISION:**

The unemployment insurance decision dated October 11, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid benefits in the amount of \$3,720.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css