

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY C TJARDS**  
Claimant

**APPEAL NO. 09A-UI-11196-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 07/05/09  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. filed an appeal from a representative's decision dated July 31, 2009, reference 01, which held that no disqualification would be imposed regarding Cody Tjards' separation from employment. After due notice was issued, a hearing was held by telephone on August 20, 2009. Mr. Tjards participated personally and was represented by Sean Spellman, Attorney at Law. The employer participated by Pat Shay, Manager of Perishables, and was represented by Tim Speir of Unemployment Insurance Services. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Tjards was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tjards was employed by Hy-Vee, Inc. from July 22, 2008 until June 21, 2009. He was last employed full-time as an assistant manager, a position he assumed on February 9, 2009. On June 19, 2009, Mr. Tjards was arrested and charged with possession of illicit drugs. He was in a vehicle with two others. Drugs were found in the back seat and he was seated in the front passenger seat. He has entered a plea of not guilty and the matter is pending a trial date.

The employer determined that Mr. Tjards was no longer bondable because of his arrest. The employer has a written work rule, of which he was aware, that prohibits the use or possession of drugs on or off the clock. Pursuant to this policy, Mr. Tjards was discharged on June 21, 2009. The above matter was the sole reason for the termination.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Tjards was discharged based on a work rule that prohibits the use or possession of illicit drugs either at work or away from work. He has not admitted to such use or possession and has not been found guilty of use or possession in a court of law.

Although the employer's work rule does not, on its face, require a conviction, there must be some evidence that the conduct did occur. The employer has presented no evidence that Mr. Tjards used or possessed illicit drugs. The fact that he was arrested and charged with possession does not establish a violation. It is axiomatic that he is presumed innocent until found guilty. Inasmuch as there was no evidence that Mr. Tjards violated the employer's work rules, no disqualification is imposed.

**DECISION:**

The representative's decision dated July 31, 2009, reference 01, is hereby affirmed. Mr. Tjards was discharged, but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw