

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M STEVENS**  
Claimant

**APPEAL NO. 09A-UI-15012-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/30/09**  
**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 September 30, 2009, reference 04, which held that no disqualification would be imposed regarding Jennifer Stevens' separation from employment. After due notice was issued, a hearing was held by telephone on November 5, 2009. Ms. Stevens participated personally. The employer participated by K. C. Lyons, 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 Ms. Stevens 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: Ms. Stevens was employed by Hy-Vee, Inc. from August 7, 2008 until August 27, 2009. She worked approximately 30 hours each week as a salad bar clerk. She was discharged for what the employer felt was conduct unbecoming of an employee. Her conduct was considered a violation of the drug-free workplace policy.

On May 28, 2009, Ms. Stevens was arrested and charged with possession of a controlled substance and possession of drug paraphernalia. The controlled substance was valium, which had been prescribed for her. The charge was based on the fact that the drug was not in the container in which it had been dispensed. Once Ms. Stevens established that the valium was legally prescribed for her, the charge of possession of a controlled substance was dismissed. She entered a plea of guilty to the charge of possession of drug paraphernalia, which consisted of rolling papers found under the seat of the car. She entered the guilty plea on August 3 and it came to the employer's attention on or about August 24.

The employer's work rules prohibit the use on work property of illegal drugs or any controlled substance that has not been prescribed. The rules further provide that the illegal distribution, possession, or use of illegal drugs or non-prescription controlled substances will be grounds for

discharge whether the individual is on the clock or not. Ms. Stevens' possession of rolling papers was considered a violation of the rules and, therefore, she was discharged on August 27, 2009. The above matter was the sole reason for the separation.

**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). Ms. Stevens was discharged after she entered a plea of guilty to being in possession of rolling papers. There was no evidence that she was in possession of marijuana or any other illegal drug for which such papers might be used. The administrative law judge appreciates that rolling papers may constitute drug paraphernalia in the proper context. There are, no doubt, any number of otherwise innocuous items that could be used as drug paraphernalia.

The administrative law judge can almost take judicial notice of the fact that rolling papers are sold at some convenience stores and some grocery stores. The administrative law judge is not inclined to conclude that Ms. Stevens was in possession of an illegal item when such item can be purchased in stores without legal consequences. This would well be a different case if the papers had been found in conjunction with the discovery of marijuana. Without more, the possession of rolling papers was not illegal conduct. For the reasons stated herein, it is concluded that deliberate and intentional misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated September 30, 2009, reference 04, is hereby affirmed. Ms. Stevens was discharged by Hy-Vee, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs