

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEN SCHWEITZER
Claimant

APPEAL NO: 14A-UI-01585-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/05/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Ben Schweitzer (claimant) appealed an unemployment insurance decision dated February 4, 2014, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hy-Vee, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2014. The claimant participated in the hearing. The employer participated through Store Director Jim Carney, Assistant Director of Loss Prevention Dave Kozak, Managers of Store Operations John Meyers and Aaron Lammers, and Employer Representative Ajah Anderson. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time assistant manager from November 6, 2012, through December 28, 2013, when he was discharged for unauthorized removal of store property. The employer's company policies require products to be purchased prior to their use or consumption and the employee must have the paid receipt. As a manager, the claimant was responsible for enforcing the employer's company policies. He signed for receipt of those policies on November 13, 2012. The claimant took and consumed a bottle of "Naked Juice" on December 20, 2013, without paying for it first or afterwards during his shift that day.

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 him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It

is the employer's 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).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on December 28, 2013, for unauthorized removal of store property in violation of company policy. He took and consumed a bottle of "Naked Juice" without paying for it before or afterwards. The claimant was aware of the company rule that prohibits employees from consuming food products before paying for them. His contention that this policy was not enforced is not supported by the evidence. The claimant admitted it would not be tolerated if a customer consumed an employer's product without paying for it.

Taking company product or consuming products without paying for them is a serious violation of the duty owed to an employer and is disqualifying under the provisions of the Iowa Employment Security Law. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant is disqualified and benefits are denied.

DECISION:

The unemployment insurance decision dated February 4, 2014, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css