

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARY M LOUNSBERY  
521 – 1<sup>ST</sup> ST S  
NEWTON IA 50208

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 06A-UI-04678-DWT  
OC: 04/17/05 R: 02  
Claimant: Appellant (1/R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mary M. Lounsbery (claimant) appealed a representative's May 1, 2006 decision (reference 09) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Hy-Vee, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2006. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf with witnesses Bill Gibbs and Stephanie Bare. Karre White observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 10, 2005. The claimant worked as a part-time checker. The employer's policy requires employees to purchase all merchandise before removing merchandise from the employer's store. The employer cannot sell beer after 2:00 a.m.

On March 22, 2006, two employees observed the claimant take a case of beer and put it in her car at 2:35 a.m. Employees confronted the claimant about the beer. When the employer asked the claimant for a receipt, she acknowledged she had not paid for the beer. The claimant then offered to pay for the beer. The employer discharged the claimant on March 22 for removing merchandise without paying for it.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant asserted that as a result of depression she was unable to realize she was violating the employer's policy. The claimant indicated she did not knowingly intend to take beer without paying for it. While the claimant may be under treatment, the evidence does not support her argument that she did not know what she was doing when she removed the beer from the employer's store without paying for it. As soon as the employer confronted her, she immediately offered to pay for the beer. A preponderance of the evidence establishes the claimant intentionally and substantially disregarded the standard of behavior the employer has a right to expect from employees. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 19, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 1, 2006 decision (reference 09) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 19, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment is remanded to the Claims Section to determine whether the claimant received any benefits she was not legally entitled to receive as of March 19, 2006.

dlw/kkf