

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH G DYER
Claimant

APPEAL NO. 08A-UI-05506-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/11/08 R: 04
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kenneth G. Dyer (claimant) appealed a representative's June 5, 2008 decision (reference 01) that concluded he was not qualified to receive 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, an in-person hearing was held in Davenport, Iowa, on July 8, 2008. The claimant participated in the hearing. Brian Hixon, the store director, appeared on the employer's behalf. 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 July 9, 1990. The claimant worked as a full-time assistant manager. Hixon supervised the claimant.

The claimant understood the employer's policy required employees to pay for all products the employee intended to consume. The policy also required employees to pay for product before it was consumed and the employee had to obtain a printed receipt verifying the employee paid for the product.

Prior to April 7, 2008, the claimant frequently consumed product without first paying for the product. The claimant, however, paid for the product before he left at the end of his shift. The claimant knew this practice violated the employer's policy, but no one talked to him or warned him that if he continued to violate the employer's policy he could be discharged as the policy stated. April 7, 2008, was the first time Hixon noticed the claimant ate product without first paying for it. Prior to April 7, 2008, the claimant's job was not in jeopardy.

On April 7, 2008, the claimant reported to work at 6:00 a.m. At 6:34 a.m. the claimant took some day-old pastries off a cart that had been prepared for the Food Pantry. When the

claimant took the pastries, he kept the price tag and placed it on the back side of a card that indicated what time employees checked in. The claimant ate the pastries, a value of \$1.98, in the safe room. At 6:45 a.m., the claimant came back to the kitchen area and bought a breakfast. He did not pay for the pastries at that time because he forgot the price tag(s) at the front register. The claimant then got involved with work and forgot to pay for the pastries he had eaten.

Hixon followed up later in the morning to see if the claimant had paid for the pastries. After reviewing the employer's computer system, Hixon learned no pastries had been purchased that morning. Hixon did not say anything to the claimant in the morning. Hixon waited until the claimant finished his lunch to see if he paid for the pastries at lunch. When the claimant did not pay for the pastries he ate after he ate lunch, Hixson talked to the claimant about this incident and suspended him for the rest of the day for violating the employer's policy.

On April 8, 2008, the employer discharged the claimant. Even though the April 7 incident was the first time Hixon knew the claimant violated the employer's policy by not paying for product he consumed, Hixon decided he no longer trusted the claimant and as an assistant store manager Hixon held the claimant to a higher standard.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 facts establish the claimant previously violated the employer's policy by not paying for product before he consumed the product. Even though no one said anything to the claimant prior to April 7, he understood the policy and as an assistant manager supervised other employees. As part of management, the claimant must be held to a higher standard since part of his job duties involved supervising other employees and enforcing the employer's policy.

The employer's policy was enacted to prevent employees from "forgetting" to pay for product they consumed. Even though the amount of money the claimant failed to pay for the pastries consumed is less than \$2.00, his failure to follow the employer's policy amounts to an intentional and substantial disregard of the behavior the employer has a right to expect from management

personnel. Unfortunately, even though the claimant was a long time employee, he committed work-connected misconduct and is not qualified to receive benefits.

DECISION:

The representative's June 5, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as if May 11, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css