

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C DODGE
Claimant

APPEAL NO: 09A-UI-05247-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's March 23, 2009 decision (reference 01) that concluded Thomas C. Dodge (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 14, 2009, in Cedar Rapids. The claimant participated in the hearing with his attorney, Derek Johnson. Bill Robertson, the store director, Brett Irving, the manager of store operations, and Chris Woodhouse, an assistant manager, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence.

After the hearing had been closed, the administrative law judge learned the employer's attorney, Kenneth Carp, had contacted the Appeals Section before July 14 to ask if he could participate by phone. Since the administrative law judge did not know about this request until July 16, this matter was reopened. A hearing was also held on August 21 with both attorneys present to supplement the July 14 record. Based on the evidence presented during both hearings, 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 November 28, 2005. He worked as a part-time overnight checker/stocker. The claimant understood the employer required employees to pay for product or items used or consumed by employees.

Prior to February 7, 2009, the claimant's job was not in jeopardy. The employer recently introduced The NuVal Nutritional Scoring System at the store. The employer gave training materials about the NuVal system to checkers. The claimant and other employees did not understand how the system worked in deciding what foods had good nutritional value.

The claimant was curious and decided to use the Internet at work to find some answers to questions he and other employees had. The claimant researched these questions at work, but after his shift ended. The claimant printed off the answers he found on the Internet. The printed copies from the computer were not very readable. As Woodhouse passed by him, the claimant asked Woodhouse if he could make more readable copies on the employer's copy machine. The claimant understood he had permission to do this.

Irving saw the claimant at the copy machine for more than 20 minutes. He asked an employee if the claimant had paid for the copies he made at the copy machine. He learned the claimant had not paid for any copies. The claimant took the copies he made home to read so he understood the NuVal Nutritional Scoring System. Although the claimant returned the copies of the information he had printed off, the employer did not find these copies.

The employer concluded the claimant violated the employer's policy by removing store property without permission and for making photocopies without paying for the copies. When the employer talked to claimant on February 9, the claimant explained that Woodhouse had given him permission to make the photocopies. Woodhouse denied giving the claimant authorization to make the photocopies or to take them home. The employer discharged the claimant on February 9 for the February 7 incident.

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 section 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 employer established business reasons for discharging the claimant. The employer concluded the claimant made the copies of the NuVal Nutritional Scoring System for his personal use because even though the employer provided training materials to checkers, there was a contact number for consumers to call if they had questions or questions that could not be answered by an employee. The claimant went beyond what the employer expected employees to do or required them to do to understand this new system by researching questions on his own time.

The problem was making copies of the information he found on the Internet. The credible evidence reveals that the claimant understood Woodhouse gave him permission to make some copies on the employer's copy machine. Since the claimant asked Woodhouse when he was passing by, Woodhouse may not have realized what the claimant asked him or that the claimant had even asked him anything. The claimant's testimony is credible and he understood Woodhouse gave him permission to make the copies without paying for them. Based on this understanding, the claimant made some copies and did not pay for them. It is not known how many copies the claimant made because even though he was at the copy machine for 20 minutes he was trying to adjust the darkness and lightness of the printing to make information he obtained readable.

The claimant may have used poor judgment when he used the employer's copy machine without paying for the copies he made, but he did not intentionally disregard the employer's policy about paying for consumable items. In this case, the claimant understood he could make the copies and brought back the printed material for other employees to read. The fact other employees did not use the material he printed is not relevant. Even though the employer discharged the claimant for business reasons, the claimant did not commit work-connected misconduct. Therefore, as of February 8, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's March 23, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 8, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs