

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

LONNA K LEONARD
9060 OAKWOOD DR
NORWALK IA 50211-1836

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

DAVID WILLIAMS
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#511
3799 VILLAGE RUN DR
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Appeal Number: 06A-UI-06827-A
OC: 06-04-06 R: 02
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lonna K. Leonard filed a timely appeal from an unemployment insurance decision dated June 21, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on July 18, 2006. Ms. Leonard participated on her own behalf and presented additional testimony by Joe Zingerman. General Merchandise Manager Kevin Hudachek, Staff Pharmacist Julie Sokolowski, Floral Designer Carolyn Jordan, and former employee Mandy Garcia testified for the employer, Hy-Vee, Inc., which was represented by David Williams of TALX UC eXpress. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lonna K. Leonard was employed by Hy-Vee, Inc. from December 28, 1998 until she was discharged effective May 19, 2006. She last worked as a bakery designer.

Joe Zingerman, a customer of the Windsor Heights store at which Ms. Leonard worked, asked Ms. Leonard to hold his Vicodin prescription for him. Each day when Mr. Zingerman and a group of friends came to the store for morning coffee, he would get pills from Ms. Leonard if he needed them. Ms. Leonard did not use the prescription medication for her own use. Vicodin is a Schedule III narcotic.

Other employees of the store observed Mr. Zingerman giving the pill bottle to Ms. Leonard. This was reported to store director, Mark Lammers. Without questioning Mr. Zingerman or allowing Ms. Leonard to explain, Mr. Lammers discharged Ms. Leonard on May 19, 2006, the day after the incident.

The company policy which was the basis for discharge was Hy-Vee's drug-free environment policy. It reads as follows:

The company prohibits the use of alcohol, illegal drugs or any controlled substance other than authorized prescription drugs on company property. Illegal distribution, possession or use of any of the above shall be grounds for dismissal, whether on or off the clock. (Emphasis supplied.)

REASONING AND CONCLUSIONS OF LAW:

The general issue is whether the claimant was discharged for misconduct in connection with her work. The specific question is whether Ms. Leonard's possession of the prescription belonging to Mr. Zingerman constituted illegal possession.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of

employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Much of the employer's evidence consisted of base innuendo of an inappropriate relationship between Ms. Leonard and Mr. Zingerman, includes a recounting gossip heard around the store. In light of firm denials made under oath by both Ms. Leonard and Mr. Zingerman, the employer's evidence of impropriety totally lacks credibility. There is no evidence that Ms. Leonard used the medication personally. Mr. Zingerman offered an explanation for his actions. The explanation on its face was plausible and unshaken by cross-examination.

The employer offered no evidence that Ms. Leonard's possession of the medication at Mr. Zingerman's request was a per sé violation of the policy. There was no testimony of prior warnings to Ms. Leonard or of past practices by the employer in interpreting the policy as it did in this case. Iowa employers can, and some do, establish policies prohibiting the possession of any prescription medicine on company premises aside from medicine prescribed for the specific employee. Such a policy clearly puts employees on notice that actions such as those in the present case are grounds for termination. The policy in question here is couched in terms of illegality. With no citation to any statute, administrative rule or court decision construing behavior such as Ms. Leonard's as illegal, the administrative law judge concludes that the employer's argument as well as its evidence fails. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 21, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

pjs/pjs