

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J MACKENZIE
Claimant

APPEAL NO. 11A-UI-11527-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/13/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 24, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 26, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. John Fiorelli participated in the hearing on behalf of the employer with witnesses, Rod Burns, Bill Novatny, and Jackie Curry. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a pharmacy technician from to April 22, 2011, to August 4, 2011. She was informed and understood that her job description required her to provide courteous service to customers. The claimant had received a warning on February 23, 2009, about discourteous treatment of a customer and informed that any more complaints of discourteous treatment could result in termination. She was warned again regarding an incident on April 5, 2011, after the claimant had harshly told a customer to stand back from the pharmacy window.

On August 3, 2011, the claimant was waiting on a customer who asked her whether she could get a 90-day supply of medication rather than the 60-day supply written on prescription. The claimant told the customer that she would have to get the prescription changed by the doctor. When the customer continued to ask about the prescription, the claimant replied harshly, "what part don't you understand?" After the customer left, the claimant put her arm and head down on the counter and said to the next customer in line, "that lady is such a pain." All of this was witnessed by another customer standing nearby who reported what happened to management.

The employer discharged the claimant for her unprofessional conduct on August 3, after receiving prior warnings for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the testimony of the customer, Jackie Curry, who had no motive to be untruthful in reporting this to management or testifying about it in the hearing and her testimony was consistent and believable.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 24, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs