

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI K STIFEL
Claimant

APPEAL NO. 11A-UI-07480-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/08/11
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated May 27, 2011, reference 01, which held that no disqualification would be imposed regarding Lori Stifel's separation from employment. After due notice was issued, a hearing was held by telephone on July 1, 2011. Ms. Stifel participated personally. The employer participated by Joe Miller, Store Director, and was represented by Alice Rose Thatch of Corporate Cost Control, Inc. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Stifel was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Stifel was employed by Hy-Vee, Inc. from July 18, 2007 until May 6, 2011. She was last employed full time as a cashier. She was discharged because of customer complaints.

On or about April 6, 2011, a customer complained that Ms. Stifel was rude and short during her transaction. The customer also stated that she made comments about the customer's difficult process. On or about April 20, the employer received two complaints. One complaint was that the customer was not allowed to use a coupon for more than one purchase. The employer felt Ms. Stifel should have allowed the further use of the coupon rather than debating the issue with the customer. The other customer complained that she was rude during her transaction. The customer was purchasing postage, a money order, and lottery tickets. The customer complained that Ms. Stifel would interrupt her and say she was only one person and could only do one transaction at a time. Ms. Stifel was told on April 26 that she was being discharged and that May 8 would be her last day of work.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Stifel was discharged by Hy-Vee, Inc. because of customer complaints. The administrative law judge does not believe she was intentionally rude. None of her comments were disparaging of the customer.

Ms. Stifel's comment on April 6 about the transaction being difficult was fairly innocuous. It is not clear that she was intending to blame the customer for the difficulty. At most, she may have used poor judgment in not simply allowing the customer to use the coupon as she wished on April 20. However, she had every reason to believe that she was honoring limitations imposed by the employer for use of the coupon. The other complaint of April 20 involved the customer with multiple purchases. It appears that Ms. Stifel was only attempting to make sure each purchase was being handled properly.

The employer testified that there were additional complaints after April 26. However, it is clear that the decision to discharge was made on April 26. Ms. Stifel was given her two week's notice at that time. Inasmuch as the decision to discharge was made on April 26, any incidents that occurred after that time could not have played a part in the decision to discharge. Moreover, there may have been some confusion on the employer's part as to the specific dates of various incidents.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. Although the evidence established that Ms. Stifel was not a satisfactory employee, it failed to establish deliberate and intentional misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated May 27, 2011, reference 01, is hereby affirmed. Ms. Stifel was discharged but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs