

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA L STEVENS-STONE**  
Claimant

**APPEAL NO. 13A-UI-13248-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/02/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. filed a timely appeal from a representative's decision dated November 27, 2013, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 19, 2013. Claimant participated. The employer participated by Mr. Aaron Heyer, Hearing Representative and witnesses Ms. Kelly Nieland, Human Resource Manager and Ms. Virginia Smith, Floral Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Diana Stevens-Stone was employed by Hy-Vee, Inc. from June 21, 2013 until October 25, 2013 when she was discharged from employment. Ms. Stevens-Stone was employed working 30 hours per week as a floral designer and was paid by the hour. Her immediate supervisor was the floral manager, Ms. Smith.

Ms. Stevens-Stone was discharged on October 25, 2013 based upon her failure to meet the employer's expectations as a regular time (30 hour per week) employee. At the time of hire the claimant had indicated that she had some limited floral experience approximately 20 years previously. Generalized training was provided to the claimant by the floral manager, however, other aspects of the claimant's responsibilities, such as computer training was not provided, but left to the claimant to obtain.

As time progressed, the employer found that Ms. Stevens-Stone was not progressing to the level of competence that the employer expected and Ms. Stevens-Stone was issued a written warning on August 29, 2013 in which the claimant was warned about timely delivery of orders, not completing job duties, politeness to other employees and customers and in general in improving her performance. ( See Employer's Exhibit C).

When the claimant continued to fail to meet the employer's expectations, a second and final warning was issued to her on September 25, 2013 because the claimant had not become proficient in delivery organization, the supervision of part-time employees when the manager was not present and the speed in prioritizing of work duties. The claimant was placed upon a 30-day probationary period to meet the employer's standards. The following 30 days Ms. Stevens-Stone improved her working relationship with clients and staff but continued to have issues with the organization of deliveries and management of part-time employees to the level of competence expected by her employer. After the claimant's performance was reviewed a decision was made to terminate Ms. Stevens-Stone from her employment as she had not reached the expectations set forth in the warnings that had been served upon her.

It is the claimant's position that she performed her duties to the best of her ability but was hampered by lack of specific training and general lack of familiarity with current floral practices and specific expectations of the Hy-Vee floral departments.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proofing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant the denial of job insurance benefits. Such misconduct must be “substantial.” When based upon carelessness the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the evidence in the record establishes that the claimant did not intentionally perform below her capabilities and that her unsatisfactory performance was not related to “wrongful intent,” the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant.

While the employer’s decision to terminate Ms. Stevens-Stone may have been a sound decision from a management viewpoint, the evidence in the record does not establish willful misconduct. Benefits are allowed providing the claimant is otherwise eligible.

#### **DECISION:**

The representative’s decision dated November 27, 2013, reference 04, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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