

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

BARBARA S LINT
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HY-VEE INC
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Appeal Number: 06A-UI-04249-CT
OC: 03/19/06 R: 03
Claimant: Appellant (1)

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 for Misconduct

STATEMENT OF THE CASE:

Barbara Lint filed an appeal from a representative's decision dated April 11, 2006, reference 01, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on May 4, 2006. The hearing was recessed and concluded on May 31, 2006. Ms. Lint participated personally and was represented by Robert Wilson, Attorney at Law. The employer participated by Brent Heinz, Store Manager; Elaine Keister, Kitchen Manager; and Sarah Lloyd, Human Resources. The employer was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lint was employed by Hy-Vee from September 10, 2001 until February 25, 2006. She was last employed full time as assistant kitchen manager. She was discharged for not fulfilling her job duties and not following instructions.

On November 22, 2004, Ms. Lint was given a written warning and advised that she needed to become familiar with the kitchen training manual by January 3, 2005. On April 14, 2005, she received a written warning because she failed to complete all of her work duties. Some of the prep work had not been done, the cooler was in disarray, and a "to-do" list had not been left for the night shift. Ms. Lint received another written warning on November 5, 2005. The warning addressed her failure to follow instructions from her manager, the fact that she sometimes raised her voice to subordinates, and the fact that she did not always show her manager the proper respect. Ms. Lint was specifically advised that she was to follow the work schedule. The warning also advised that she could be discharged if problems continued.

The decision to discharge Ms. Lint was based on conduct that occurred while the manager was away from the store on vacation. Upon the manager's return on February 18, it was discovered that Ms. Lint had ordered too much merchandise. She had ordered items that she did not know the kitchen manager had already ordered. The manager had ordered items under the salad bar while Ms. Lint ordered under the kitchen. She also ordered items based on other employees telling her items were low rather than checking for herself. It was also discovered that Ms. Lint was still using the old kitchen thermometer rather than the digital one as instructed. It was also discovered that she had worked overtime without permission.

Ms. Lint was given a written warning on February 18, 2006 regarding the problems that arose during the manager's absence. The warning imposed a one-week suspension and contained a corrective plan of action regarding Ms. Lint's future conduct. On February 25, she was advised that the employer had decided to terminate her employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Lint was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 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). The primary reason for Ms. Lint's discharge was her failure to follow the instructions given by her kitchen manager. For the most part, the reasons given for the discharge represented periodic lapses in good performance. However, Ms. Lint continued to work at times when she was not scheduled to work.

Ms. Lint was warned in November of 2005 that she was to adhere to the work schedule. In spite of the warning, she worked additional hours without authorization while the kitchen manager was on vacation. Her actions were contrary to the employer's interest in containing labor costs. If she felt she needed to work overtime in order to meet the needs of the store's customers, she could have sought permission to work additional hours. Her conduct in working additional hours without authorization was contrary to the standards she knew the employer expected of her by virtue of a prior written warning. For the above reasons, it is concluded that misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 11, 2006, reference 01, is hereby affirmed. Ms. Lint was discharged by Hy-Vee for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs