

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ETHEL BROWN**  
Claimant

**APPEAL NO. 07A-UI-04718-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04-15-07 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 2, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 24, 2007. The claimant participated in the hearing. Jamie Frank, Store Director; Roxanne Martinek, Human Resources Manager; Jeff Kane, Manager of General Merchandising; and David Williams, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time pay station manager for Hy-Vee from September 19, 2003 to April 17, 2007. She was discharged after repeated complaints from both coworkers and customers about her rude and abrupt behavior. On September 26, 2006, the employer received eight different statements from kitchen employees about inappropriate comments and conversations involving the claimant. The employer told her there was “a lot of negative statements in her file” and the employer would have to make some decisions about the claimant’s future employment and advised her to “think with her head, not her emotions.” On October 18, 2006, she received a written warning and five-day suspension following a complaint by a customer that she loudly berated a coworker in front of the customer. She had been instructed to go through a manager before speaking to other employees on several previous occasions and was verbally counseled nine times regarding problems between her and coworkers and/or customers. On October 27 and 30, 2006, she received verbal warnings following a customer complaint indicating the claimant told another employee not to “get pissy with her, get pissy with the person who wrote the ticket.” She blocked the checkout line and called another employee over for the customer to talk to and the customer reported the claimant was not professional in dealing with the other employee in front of the customer. The employer again told her to handle disciplinary situations through a manager and the claimant stated she understood. Following that warning the claimant testified she knew her job was in jeopardy and

tried to improve her “negative” and “abrasive” attitude. On April 10, 2007, a customer complained about how rudely the claimant treated him when he tried to purchase a children’s buffet instead of a senior buffet which he had done since the store opened. On April 16, 2007, a customer complained to the employer that she was in line and the claimant told her she could pay after she ate and the customer stated she was getting her food to go and the claimant argued with her and said her friend said they were staying and the conversation became “heated.” The customer tried to hand her pink slip to the claimant and the claimant rudely told her she would have to wait. Jeff Kane, Manager of General Merchandise, was in front of the customer in line and reported the situation to Store Director Jamie Frank. Mr. Kane told Mr. Frank the claimant did not greet the customer or smile at her and was “rude and abrupt” and the employer terminated the claimant’s employment April 17, 2007.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Customer service is an integral part of the employer’s business and the claimant was repeatedly warned about her negative attitude toward customers and coworkers. The employer told her several times to take her concerns to a manager rather than addressing her coworkers personally but the claimant continued to confront coworkers in an unprofessional manner. The

claimant was aware her job was in jeopardy but despite the numerous warnings she failed to correct her behavior. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The May 2, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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