

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

CAROL A MURPHY  
1235 COLUMBIA ST  
WATERLOO IA 50703

HY-VEE INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

DAVID WILLIAMS  
TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 04A-UI-12100-AT  
OC: 10-10-04 R: 03  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed a timely appeal from an unemployment insurance decision dated November 1, 2004, reference 01, which allowed benefits to Carol A. Murphy. After due notice was issued, a telephone hearing was held December 22, 2004 with Ms. Murphy participating. Store Director Greg Wery and Store Operations Manager Ross Heggen testified for the employer which was represented by Jackie Wiegand of TALX UC eXpress.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Carol A. Murphy was employed by Hy-Vee, Inc. from October 27, 1986 until she was discharged October 13, 2004. She last worked as a customer service clerk. On the date of discharge, a customer came to the store to redeem bottles and cans. Ms. Murphy's count was different from the customer's. After what the customer believed was a sharp comment by Ms. Murphy, he told her that he would report to someone that she should be nicer. Ms. Murphy replied with words to the effect that she hoped that he did so so that she could be fired and not have to deal with "assholes" like the customer.

The customer reported the incident to Store Operations Manager Ross Heggen who passed the information along to Store Director Greg Wery. Mr. Wery interviewed Ms. Murphy who admitted the comment. Mr. Wery had counseled Ms. Murphy on April 2, May 3 and August 16, 2004 about her attitude and behavior towards customers and coworkers. The company handbook prohibits profanity and stresses customer service as the basis of the company's success. Taking all of this into account, Mr. Wery discharged Ms. Murphy. Ms. Murphy has received unemployment insurance benefits since filing a claim effective October 10, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her work. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In response to Ms. Wiegand's question, Ms. Murphy readily acknowledged that her comment to the customer was grounds for immediate discharge. In other words, she knew that what she had said was wrong. The final incident was a deliberate action contrary to the employer's interest. The administrative law judge does not view it as an isolated instance of poor performance or judgment because of the three prior counselings in the preceding six months. Disqualifying misconduct has been established. Benefits must be withheld.

Ms. Murphy has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

#### DECISION:

The unemployment insurance decision dated November 1, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,816.00.

tjc/b