

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L STITZEL
Claimant

APPEAL NO. 13A-UI-02637-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/20/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the February 25, 2013 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 1, 2013. Claimant participated with her mother, Marlene Perry. Employer participated through Shenandoah store human resources manager, Amy Jones; store director, Dan Weiler and was represented by Julia Day of Corporate Cost Control. Employer's Exhibits 1 (fax pages 2 and 3) and 2 (fax pages 3 – 10) were received.

ISSUE:

Was the claimant suspended for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant manager and was suspended from employment without pay on January 18, 2013 pending resolution of criminal charges. She was arrested at work for three counts of felony identity theft. The employer has an off-duty conduct policy and claimant has access to customers' personal financial information, but the charges are not related to her work. Claimant entered a not guilty plea and her next court appearance is in June 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

Iowa Code § 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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 Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Claimant entered a plea of "not guilty" and was, therefore, entitled to the presumption of innocence. The employer's evidence as a whole failed to establish that she violated any known company rule or that she was otherwise guilty of misconduct within the meaning of the law. As such, no disqualification is imposed.

DECISION:

The February 25, 2013 (reference 02) decision is affirmed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs