

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

LAURA J ROTH
Claimant

APPEAL NO: 11A-UI-08518-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 05/22/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 17, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Judy Berry, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf with Chad Thacker and Tiffany Tucker as witnesses. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2000. She has worked at various locations as a full-time floral designer. Tucker became the claimant's supervisor about a month before the claimant's employment ended.

The claimant and other floral designers make floral arrangements for Mother's Day in the back where there are not cash registers. During a mass production day, such as Mother's Day, after an order is completed, a floral designer puts her initials on the order. Another employee may then place the order in a semi-trailer to be delivered and another employee takes the order to ring it up on the cash register. The Saturday before Mother's Day, May 7, the claimant worked extremely long hours to get all the flower orders completed. The employer gave her a written warning on May 16 because they found orders she had arranged on the floor and had not been rung up on the cash register. Also, the employer had to look for some of the orders she had designed because the flowers were not put in the right area. Finally, some employees complained about the claimant's attitude on May 7.

The claimant has a number of warnings in her personnel file. When she received the May 16 warning she understood her job was in jeopardy and asked if she could spend more time just on

a cash register since the employer kept giving her warnings for her job performance as a floral designer. The employer declined this request.

In April a customer ordered flowers for a May 14, 2011 wedding. The claimant designed and wrote up an order for pew bows for this wedding. When Tucker ordered the flowers and supplies for this wedding, the claimant understood Tucker also ordered the floral holders for the pew bows. When the wedding order came in on May 11, the floral holders the claimant needed for the pew bows were not delivered. The claimant assumed the floral holders would be delivered the next day and did not say anything to Tucker on Wednesday. When the floral holders were not delivered the next day, Thursday, and both Thacker and Tucker were off work, the claimant started looking for the floral holders from local suppliers. She could not find any local supplier that had the floral holders. She found a company in Kansas that had the floral holders she wanted, but they could not deliver the floral holder until after the May 14 wedding. When Tucker came in on Friday, the claimant told her about the status of the floral holders she had needed. The claimant told Tucker she could improvise and use something else to secure the flowers to the bows. Tucker had not used this method before, but trusted the claimant's expertise and judgment in this. The claimant made the pew bows with explicit directions on how to put the bows on the pews. The customer picked up the flowers for the wedding. Although the claimant tells customers to call her if there are any problems, the claimant was not working when this wedding order was picked up.

On May 18, the mother of the bride complained about the pew bows that were made for her daughter's wedding. She told the employer the pew bows fell apart and she spent her time trying to fix the bows and missed spending time with her daughter as she got ready for her wedding. The customer was very upset. The employer reimbursed the customer \$160.00 that had been charged for the pew bows.

On May 20, 2011, the employer discharged the claimant. The employer asserted the claimant had not told anyone in management the floral holders she needed were not delivered. Since the claimant again failed to perform her job satisfactorily, the employer discharged her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. Although the claimant received numerous write-ups during her employment, the most recent warning in addition to the pew bow incident do not establish work-connected misconduct. The facts do not establish that the claimant intentionally disregarded the employer's interests. She worked to the best of her ability. She advised Tucker about the missing floral holders and tried to find them locally. When the claimant could not find them and Tucker knew she did not have them, Tucker allowed the claimant to improvise and knew how the claimant was making the pew bows. No one knows why the pew bows did not work. The customer did not contact the employer the day of the wedding to correct the problem. While the claimant may have used poor judgment at times, she did not commit work-connected misconduct. As of May 22, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 17, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 22, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css