

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH SANCHEZ
Claimant

HY-VEE INC
Employer

APPEAL 18A-UI-07744-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/24/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Elizabeth Sanchez (claimant) filed an appeal from the July 12, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged her for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2018. The claimant participated personally. The employer participated through Human Resource Manager Sandra Berven and Store Director Darin Kreich and was represented by Jennifer Rice of Corporate Cost Control. No exhibits were offered into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on January 8, 2015. Approximately a year and a half into her employment, she began working as a part-time Pharmacy Clerk. She was separated from employment on June 26, 2018, when she was discharged.

The employer has a fuel saver customer loyalty program. Customers purchase select items from the employer and can receive a savings on each gallon of fuel purchased from a designated business. The employer may also run special incentives, such as an additional amount in fuel saver points when refilling a prescription. Employees are responsible for scanning the customers' fuel saver card or entering their phone number to ensure the customer receives their fuel saver points. The employer has a policy that no employee was to take the fuel saver points from a customer's purchase or add fuel saver points to their own account. Violation of that policy is treated as theft and can result in discharge.

On June 26, 2018, Store Director Darin Kreich received notice from the Safety and Security team that the claimant's fuel saver card had been utilized on five different transactions at her register in the pharmacy the day before. The claimant's card had been credited for fuel saver

points related to customers refilling their prescriptions. Additionally, the Safety and Security team reviewed the claimant's history and noticed suspect transactions on other days.

Kreich and Human Resource Manager Sandra Berven met with the claimant to ask her about the situation. The claimant denied swiping her card on the customer transactions the day before. She claimed she had swiped her card to determine if balances could be checked without making a purchase and that the register was having technology problems. The employer was unable to find any technology issues with the register before or after June 25.

During the meeting, the claimant acknowledged that on the morning of June 26, she had added \$1.00 savings per gallon of fuel to her fuel saver account. She had purchased ten prescriptions in the pharmacy documented on the purple card as required to receive the bonus. However, the proper procedure would have been to surrender the card to another employee who would add the money to her fuel saver account and destroy the purple card. After adding the money to her own fuel saver account, the claimant did not destroy the purple card but kept it. When called into the meeting a few hours later, she gave the purple card to Berven. The employer concluded the claimant violated its policy related to the fuel saver card and discharged her.

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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 the 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does

not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

Claiming fuel saver points to which an employee is not entitled is theft. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. An employer who offers a rewards program has an interest in the rewards being used in the manner they are intended. In this case, the claimant deliberately disregarded the employer's interest and violated a company policy when she claimed rewards to which she was not entitled on June 25 and did not follow procedure to protect the integrity of the rewards program on June 26. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The July 12, 2018, reference 01, unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn