

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

DANIEL E WADER  
315 E 15<sup>TH</sup> ST  
DAVENPORT IA 52803

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

HY-VEE INC  
TALX UC SERVICES  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 06A-UI-01080-CT  
OC: 12/25/05 R: 04  
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

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated January 23, 2006, reference 01, which held that no disqualification would be imposed regarding Daniel Wader's separation from employment. After due notice was issued, a hearing was held by telephone on February 14, 2006. Mr. Wader did not participate personally but through his wife, Jennifer Wader. The employer participated by Bonnie Bell, Director of Loss Prevention, and Jason Lester, Manager of Perishables. The employer was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wader was employed by Hy-Vee, Inc. from April 3, 2000 until January 12, 2006. He was last employed full time as a night stocker. On December 23, 2005, the employer received an anonymous tip that Mr. Wader had removed merchandise from the store without making payment. The employer spoke with Mr. Wader on December 28. At that time, he acknowledged having stolen two twelve-packs of beer and banana bars from the store on November 27, 2005. He also acknowledged having stolen other items over the course of several months. He agreed to make restitution in the amount of \$100.00.

Mr. Wader was discharged on December 28, 2005. He was paid vacation pay through January 12, 2006. His admitted theft of merchandise from the store was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Wader was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Wader was discharged after he admitted to having stolen at least \$100.00 in merchandise from the store in which he worked. Theft from one's employer is clearly contrary to the type of behavior the employer has the right to expect and is, therefore, misconduct within the meaning of the law. Accordingly, Mr. Wader is not eligible to receive job insurance benefits. No overpayment results from this reversal of the prior allowance as Mr. Wader has not been paid benefits on his claim filed effective December 25, 2005.

DECISION:

The representative's decision dated January 23, 2006, reference 01, is hereby reversed. Mr. Wader was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/s