

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GRETCHEN M STEINES**  
Claimant

**APPEAL NO: 12A-UI-02310-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/22/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 28, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearings held on March 22 and 28. Sabrina Bentler, a representative with Corporate Cost Control, Inc., represented the employer. Chuck Donnelly, Amy Kramer, and Leah Hefel appeared at both hearings. Andy Hopman appeared at the March 28, 2012 hearing. During the hearings, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 May 2008. She worked full-time as the general merchandise manager. Before a January 1, 2012 inventory, the claimant's job was not in jeopardy. The employer did not require her to meet a specified gross profit percentage. Based on her performance, the employer recently gave the claimant a raise and gave her added job responsibilities.

On January 1, employees inventoried the employer's merchandise. Some of the items on the inventory had to be physically counted and some did not. The claimant asked her assistant manager, Andy Hopman, to inventory the general merchandise, which included candy. The claimant and another employee worked on the inventory for health and beauty products. Hopman inputted the inventory numbers into a computer. When the inventory was printed at 6:41 a.m. on January 2 (Employer Exhibit One), Hopman indicated the inventory was lower than what he had assumed it would be. Kramer heard the claimant make a comment that the inventory could not be right.

Hopman understood the claimant told him to change some numbers or make adjustments in the inventory. It is not a problem changing or adjusting inventory numbers if the item is recounted and making an adjustment to the inventory is justified. When Hopman inputted new numbers or made adjustments to three sections of the general merchandise, the adjusted inventory at 1:58 p.m. on January 2 (Employer Exhibit Two), it improved the gross profit percentage.

When the claimant was on vacation on January 4, Hopman reported that the claimant told him make adjustments on the January 1 inventory. Kramer investigated this matter. She discovered there were three sections—candy, sporting goods and the backroom—had significant increases or adjustments made to the 6:41 a.m. January 1 inventory. (Employer Exhibits Two and Three.) The employer did not contact the claimant before January 23, even though she was in training at the corporate office in mid-January.

On January 23, the employer asked the claimant why adjustments had been made on the initial inventory. The claimant indicated she did not know why the count on some items had been increased. She also said that she had not inputted any adjustments to the inventory. Hopman made all the adjustments. The employer did not tell the claimant that Hopman told the employer the claimant told him to make the changes.

The employer concluded the claimant told Hopman to increase the numbers of certain items on the January 1, 2012 inventory. The claimant denied that she recounted any items that were adjusted. When Kramer checked these items between January 4 and 23, the numbers of these items in inventory did not correlate with the adjusted inventory numbers. Instead, they best matched the initial inventory numbers. The employer concluded the claimant intentionally falsified the inventory and 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).

When mistakes are made in an inventory, an employee is not usually discharged. In this case, the employer concluded the claimant intentionally falsified adjustments made to the inventory so her gross profit percentage looked “good.”

This case must be decided on credibility decisions. The evidence reflected in Employer Exhibits One through Four establishes the adjustments made to the initial inventory report and the number of items the employer counted between January 4 and 23, 2012. It is undisputed that Hopman inputted the numbers into the initial inventory report and the adjusted inventory report. The claimant does not dispute that she would have told Hopman to change numbers if the first count was incorrect. She denied she counted any of the adjusted items and expected items to be recounted before any changes or adjustments were made. As the manager of the department, she was ultimately responsible for employees she supervised.

Factors that affect the credibility of the evidence include Kramer taking over the claimant’s job and now managing both perishable and general merchandise departments, the employer waiting until January 23 to say anything to the claimant even though she could have been contacted when she was at the corporate office for training, the claimant’s job was not in jeopardy before the inventory, she had recently received a raise and added job duties based on her job performance, and she did not have to meet a specified gross profit percentage.

Based on all the evidence and the above factors, the claimant’s testimony is considered more credible than Hopman’s. While the claimant told Hopman to make changes if the count was not correct, it is unreasonable to believe that she would have told Hopman to make significant changes in the inventory when she had nothing to gain. The evidence does not establish that the claimant intentionally falsified or directed an employee to falsify the January 1 inventory. The claimant did not commit work-connected misconduct. Also, if the claimant committed work-connected misconduct, this was not a current act. As of January 22, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative’s February 28, 2012 determination (reference 01) is reversed. The employer discharged the claimant, but the claimant did not commit work-connected misconduct or a current act of work-connected misconduct. As of January 22, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer’s account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw