

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKKI HEINSE
Claimant

HY-VEE INC
Employer

APPEAL NO: 12A-UI-14084-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11-04-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 27, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 2, 2013. The claimant participated in the hearing. Bob Taylor, Human Resources Director; Kim Strub, Manager of General Merchandise; Moe Lang, Manager of Store Operations; and Aaron Heyer, Employer Representative participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fuel station manager for Hy-Vee from April 21, 2005 to November 5, 2012. She was discharged for repeatedly leaving the store to take her son to school without clocking out as required by the employer's policy (Employer's Exhibits Two and Four). In 2011 the employer made management employees hourly rather than salaried. Consequently, if a management employee left the premises, she was required to clock out for at least 30 minutes. Because the claimant was a management employee, it was her responsibility to explain the changes to her employees and to enforce the changes the employer made. The claimant was well versed in the changes.

The employer noticed the claimant leaving the store on several occasions and asked her twice if she was clocking out and the claimant assured the employer she was indeed doing so. On November 5, 2012, Kim Strub, Manager of General Merchandise, called the fuel store and asked for the claimant and was told she was taking her son to school. He checked with human resources to see if she clocked out and learned she had not. Mr. Strub asked for a printout of the claimant's time clock history since school started and there were no punch outs for any of the times the claimant left. When the claimant returned to the store Mr. Strub asked her if she had clocked out and the claimant stated she had. Mr. Strub questioned her further and the

claimant stated she had been punching out but “forgot sometimes.” After Mr. Strub showed her the time sheets without any clock outs the claimant admitted taking her son to school every Monday and at least twice a week. The employer verified the claimant left to take her son to school without clocking out September 10, September 17, September 24, October 1, October 8, October 15, October 22 and November 5, 2012. The employer terminated the claimant’s employment for failing to follow the time clock policy.

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.

Iowa Code section 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “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.

The claimant was a management employee and as such understood the employer’s policies and procedures, including the employer’s requirement that employees clock out for at least 30 minutes if they leave the store. The claimant left the store on at least eight occasions to take her son to school without clocking out and was then dishonest with the employer when confronted about the situation. Under these circumstances, the administrative law judge concludes the claimant’s conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer’s interests and the employee’s duties and obligations to the employer.

The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 27, 2012, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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