

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

RYAN S DE JOODE  
4703 SW 6<sup>TH</sup> ST  
DES MOINES IA 50315 3905

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166 0283

TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 06A-UI-01240-DWT  
OC: 01/08/06 R: 01  
Claimant: Appellant (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

STATEMENT OF THE CASE:

Ryan S. De Joode (claimant) appealed a representative's January 26, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Hy-Vee, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2006. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf. Andy Streit and Sara McAuley testified on the employer's behalf. Randi Powell observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2002. The claimant worked full time stocking meat. The employer's code of conduct informs employees that the employer expects honesty from all employees.

On December 30, 2005, the claimant was not working but brought back recyclable bottles. When the claimant was in the can and bottle recyclable area, he noticed a dirty water bottle. The claimant knew the water bottle was worth some money. No one said anything when the claimant took the water bottle. The claimant did not know the water bottle had been brought in by anyone who was in the recyclable area. The claimant thought the bottle had been abandoned by someone. The claimant did not know if water bottle would be worth any money because it was very dirty. The claimant turned in the water bottle and received \$7.00 for it.

After the claimant left the store, a customer reported that someone had taken their \$7.00 water bottle. McAuley remembered that the claimant had turned in a water bottle and reported this to the employer. The employer investigated and verified that the claimant picked up the water bottle from the recyclable area and turned it in for money.

Before the claimant was next scheduled to work, he was at local drinking establishment with friends and McAuley. While the claimant was partying with his friends, McAuley mentioned how a customer reported having a \$7.00 water bottle taken from him at the employer's store. When the claimant reported to work, he did not think about what McAuley told him at the bar. The claimant did not tell anyone in management he had picked up a water bottle on December 30, 2005, because he believed someone had abandoned the water bottle.

On January 9, 2006, the employer discharged the claimant. The employer concluded the claimant violated the employer's code of conduct when he turned in a water bottle for money and he knew the water bottle did not belong to him. Also, because the claimant failed to contact anyone in management to report he had turned in a water bottle that did not belong to the claimant the employer questioned the claimant's integrity.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The claimant used poor judgment when he picked up a large water bottle from the employer's recyclable area and turned it in for \$7.00. The fact the claimant did not say anything about turning in the water bottle after McAuley made a comment about customer and the water bottle at a bar where the claimant was partying with friends and McAuley does not establish that the claimant was dishonest or trying to hide what he had done. Since the claimant believed the water bottle had been abandoned, he had no reason to talk to management about turning in the water bottle.

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally and substantially disregarded the standard of behavior the employer has a right to expect from an employee. The claimant did not commit work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's January 26, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s