

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI L COLLIER
Claimant

APPEAL NO. 07A-UI-06874-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/12/06 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Vicki Collier, filed an appeal from a decision dated July 12, 2007, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 30, 2007. The claimant participated on her own behalf. The employer, Hy-Vee, participated by Store Director Chuck Osmanski and Fill Station Manager Tamie Sheapard and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Vicki Collier was employed by Hy-Vee from November 17, 2006 until June 19, 2007, as a part-time gas clerk. She was placed on suspension June 14, 2007, due to customer complaints about her conduct. Fill Station Manager Tamie Sheapard had spoken with her several times in the past about her conduct and the final occurrence led to the suspension.

While Ms. Collier was on suspension, she went into the fuel station, where she confronted Kristin Shaw, another clerk, and accused her of being responsible for the suspension by making a false report about the incident. Ms. Shaw told the claimant she had gotten herself into trouble by her actions, and at some point during this acrimonious exchange Ms. Collier called Ms. Shaw a bitch. The incident was reported to the manager, Tamie Sheapard, who told Ms. Shaw and the other witness, Donna Sholl, to contact Store Director Chuck Osmanski. The store director had the witnesses write up statements and then called Ms. Collier into the store, at which time he discharged her.

REASONING AND CONCLUSIONS OF LAW:

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 acknowledged the confrontation with Ms. Shaw in the fuel station and calling her a bitch. Ms. Collier seems to feel that she should not be held accountable for this, because she believed the initial suspension to be unjustified and that the confrontation with Ms. Shaw occurred while she was not on duty. The administrative law judge does not consider either of these justifications to be convincing. The claimant, although on suspension, was still an employee of Hy Vee, on company premises and was harassing a fellow employee and using inappropriate language in the presence of customers. Whatever accusations the claimant had to make against Ms. Shaw should have occurred off company premises and off company time, but the claimant stated she just took advantage of the opportunity to harass Ms. Shaw when it presented itself.

The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of July 12, 2007, reference 03, is affirmed. Vicki Collier is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw