

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J BEYER
Claimant

HY-VEE INC
Employer

APPEAL NO: 12A-UI-01855-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/08/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 15, 2012, reference 01, that held she was discharged for misconduct on January 12, 2012, and benefits are denied. A telephone hearing was held on April 9, 2012. The claimant, and Cody Van Horn, a former employee, participated. Alice Rose Thatch, Representative; Pat Ohlerking, Store Director; and Stacy Hoard, Perishables Manager, participated for the employer. Employer Exhibits 1 – 9 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on April 12, 2008, and last worked for the employer as a part-time meat clerk on January 12, 2012. The claimant received an employee handbook that contained the policies of the employer. The policy provides an employee may be terminated for violation.

The employer has a policy that employees issue gas coupons for discount purchases of fuel at employer stations depending on the amount of merchandise purchase. The range of gas discount is 5 cents to 25 cents per gallon with a minimum purchase of \$5.00 of store product to a maximum of \$25.00. Employees initial the coupon to show who gave the discount.

A cash register employee reported to the store director a purchase where the amount of gas coupon discount was greater than what the food product entitled the customer to receive. On January 11, the director had the cash register employees present to him any gas discount coupons initialed by the claimant with a comparison against the customer purchases. The comparison showed claimant gave all seven customers excessive gas discounts (coupons).

In order to ensure claimant understood the gas coupon discount policy, the director made a \$10.00 dollar meat purchase and manager Hoard made a \$5 dollar purchase from claimant on January 12. Claimant gave the correct amount of gas discount coupon for each purchase.

Later in the day on January 12, the store director confronted claimant with the seven coupons and corresponding customer purchases that showed excessive gas discounts. Claimant did not deny she had issued the coupons. She made statements she had made a bad decision and she knew what she did was wrong. The employer terminated claimant for violation of store policy that involved claimant giving away gas to customers who had not met the amount of product purchase requirement to receive the allowable discount.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 12, 2012, for repeated violations of company policy.

The claimant knew the employer policy and her repeated violations for the same offense constitute job disqualifying misconduct. Claimant had no authority to issue more gas coupon discounts to customers than what the policy provided was limited to the amount of product purchased.

DECISION:

The department decision dated February 15, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on January 12, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css