

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT BEAL
Claimant

APPEAL NO. 07A-UI-03950-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03-25-07 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 10, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 3, 2007. The claimant participated in the hearing. Dan Fuller, Store Director, and David Williams, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two 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 full-time assistant manager for Hy-Vee from January 30, 2006 to April 1, 2007. On March 13, 2007, the claimant was in charge of the store for the night shift. A second shift employee left \$550.00 in a tracer bag on top of the safe in the safe room behind the customer service counter. The claimant was aware he was \$550.00 short and completed a confirmation sheet and added that amount to his night count. He put another bag on top of the safe but never saw the bag containing the \$550.00 but admits at the end of the evening he should have verified the bag was there when he came in and should have put the bag in the safe at that time but failed to do so. On March 14, 2007, the employer discovered the bag containing the missing \$550.00 and called the claimant to a meeting that morning. The employer suspended the claimant and then made the determination to terminate his employment for failing to follow company policy (Employer's Exhibit One). On February 6, 2007, the claimant left a bag containing \$940.00 under the register all night and received a written warning stating the employer had talked to the claimant about his "accountability since October of '06. Future incidents could result in disciplinary action to include suspension, demotion or termination" (Employer's Exhibit Two). The claimant signed the warning and testified he was aware his job was in jeopardy. The employer attempted to contact the claimant several times after his suspension to notify him that his employment was terminated; but when it

was unable to contact him and he did not contact them, it terminated his employment April 1, 2007.

The claimant has not claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant failed to follow procedures with the money collected on at least two occasions and had been warned that his failure to improve his performance in that area could result in termination. 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). Benefits are denied.

DECISION:

The April 10, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is not overpaid benefits, as he had not claimed benefits since his separation from this employer.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw