

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATTI R WILSON**  
Claimant

**APPEAL NO: 14A-UI-05009-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/06/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 7, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the June 3 hearing. Molly Rooney, a Corporate Cost Control representative, appeared on the employer's behalf. Amy Jordahl, the store director, and Brandon Utz, the manager of store operations, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2013. She worked part time as a courtesy clerk and then as a clerk in the wine and spirits department. The employer's policy requires employees to sell tobacco only to customers 18 and older and alcohol only to customers 21 and older. Employees are responsible for checking a customer's identification and their birthdate. The employer's cash registers have a function that allows an employee to input a customer's birthdate. The cash register program does not allow a sale to be processed if the customer is not the required age.

The claimant understood that selling tobacco or alcohol to a minor was prohibited by the employer. She also understood the employer would discharge an employee the first time an employee sold alcohol or tobacco to a minor.

On February 15, 2014, the claimant looked at a customer's identification and birthdate. The customer wanted to buy a tobacco product. The claimant did not enter the customer's birthdate into the cash register. The customer's birthday was in 1997. For the customer to legally buy tobacco, the customer had to be born in 1996. After the claimant sold tobacco to the underage customer, a police officer came into the store and gave the claimant a ticket.

The employer discharged the claimant on February 15 for violating the employer's policy about selling tobacco only to customers who were 18 years or older.

**REASONING AND CONCLUSIONS OF LAW:**

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

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer followed its policy and discharged the claimant for selling tobacco products to a minor. The claimant looked at the customer's birthday, but did not verify the customer was 18 years or older by putting the birthdate into the cash register. The facts do not establish that the claimant intentionally sold tobacco to a minor. Instead, she was negligent. The claimant looked at the birthdate and incorrectly calculated that the customer was 18. This isolated incident of negligence does not constitute work-connected misconduct. As of April 6, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 7, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant's negligence on February 15, 2014, does not rise to the level of work-connected misconduct. As of April 6, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to a maximum charge of \$58.40 during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css