

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHELSEY HOADLEY**  
Claimant

**APPEAL NO. 09A-UI-01305-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 11-16-08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 20, 2009, reference 01, which held that she was not eligible for benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2009. The claimant participated in the hearing. The employer did not provide a phone number where it could be reached to participate in the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time kitchen clerk for Hy-Vee from April 11, 2008 to November 15, 2008. She asked the employer August 15, 2008, not to schedule her with Garrett because he was causing problems with the claimant's boyfriend by flirting with her. The person making the schedule continued scheduling her on Fridays with Garrett, so she went in and asked Jenn, another employee, to switch with her so she could work on Wednesdays and Jenn could work on Fridays. Jenn agreed and changed the first week of the schedule. When the claimant reported to work on Wednesday, Jenn was there and denied changing the first week of the schedule and denied agreeing to work on Friday, so the claimant was reprimanded. The claimant talked to the kitchen manager November 14, 2008, and asked if she could switch her hours from 10:00 a.m. to 4:00 p.m. to 8:00 a.m. to 2:00 p.m. on Saturdays like she used to be scheduled. The kitchen manager said it would not be a problem, so the claimant reported to work at 8:00 a.m. November 15, 2008. Manager Chris Chambers was there when the claimant arrived and told the claimant she could not change her hours at will. The manager was also upset because the claimant had been tardy several times and had closed down the kitchen early one night. The claimant was discharged as a result.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected 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 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 substantial and 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 claimant was discharged for repeatedly changing her hours without authorization, but she contends she had the kitchen manager's approval on the last change. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The unemployment insurance decision dated January 20, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw