

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE S GRUWELL
Claimant

APPEAL NO. 15A-UI-01346-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/28/14
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 23, 2015 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged for misconduct in connection with her work. After due notice was provided, a telephone hearing was held on February 25, 2015. Claimant participated. The employer participated by Ms. Alyce Rose-Thach, Hearing Representative, and witnesses Mr. Wes Brommel, Human Resource Manager, and Mr. Jason Crocker, Store Director. Employer's Exhibits E, Three, Four, Five, and Seven through Seventeen were admitted into evidence. Claimant's Exhibit One was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jacqueline Gruwell was employed by Hy-Vee Inc. from December 12, 2011 until December 30, 2014 when she was discharged from work. Ms. Gruwell was employed as a part-time cashier and was paid by the hour.

The claimant was discharged after she admitted transferring company "fuel saver" reward points to her own personal fuel saver account, in violation of company policy. Ms. Gruwell was aware that if a company customer did not have a fuel saver reward card, which the client was not eligible for the reward points on transactions and no discount on gasoline purchases in the future would be allowed. The claimant was also aware that it was against company policy to transfer fuel saver points to her own account if the customer did not have a fuel saver account.

The company's security department had noted unusual transactions taking place with respect to the fuel saver points and transactions that Ms. Gruwell was engaged in; and they investigated further. The company concluded that Ms. Gruwell had repeatedly engaged in the practice, although she had been trained both as a cashier and in the company's fuel saver program.

When first questioned about the matter, Ms. Gruwell denied any wrongdoing but then subsequently admitted that she had engaged in the practice repeatedly. Because the claimant's offense was a serious violation of company policy, Ms. Gruwell was discharged from employment.

It is the claimant's position that because of depression and pain, that she in effect did not know what she was doing during the incidents and she should not be held accountable for her actions.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence establishes that Ms. Gruwell had been fully trained as a cashier and fully trained in the company's fuel saver reward program. The claimant was aware through training that it was a serious violation of company policy to manipulate the fuel saver program in any way so as to procure a benefit for herself by using the purchases of company customers to do so. The claimant was trained that the fuel saver program was limited to savings for the actual purchaser of the items and limited to purchasers who are in the fuel saver program.

The employer acted reasonably in investigating the issue and concluded that the claimant's violation of the fuel saver program policy took place on numerous occasions. After initially denying the allegations against her, Ms. Gruwell admitted that she had violated the fuel saver policy and was discharged.

Although the administrative law judge is mindful that it is the claimant's position that due to depression and pain she may not have been able to differentiate right and wrong, the administrative law judge concludes that the claimant's testimony strains credibility. The claimant's exhibit itself describes the claimant as a patient being "depressed, but alert and oriented to person, place, and time, and calm."

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

DECISION:

The representative's decision dated January 23, 2015 (reference 01) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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