

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA D BEAUNE**  
Claimant

**APPEAL NO. 14A-UI-07662-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/06/14**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Sheila Beaune filed a timely appeal from a representative's decision dated July 23, 2014 (reference 01) which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Council Bluffs, Iowa on August 26, 2014. Claimant participated. The employer participated by Mr. Bruce Burgess, Employer Representative, by telephone and witnesses Mr. Ray Doughan, Store Director, and Megan John, Pharmacy Manager, who appeared in person. The Employer's Exhibits One, Two, Three, Four, Five, Six, and Seven were received 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: Sheila Beaune was employed by Hy-Vee Inc from August 2, 2004 until July 3, 2014 when she was discharged from employment. Ms. Beaune was employed as a 30 hour per week pharmacy clerk and was paid \$12.30 per hour. Her immediate supervisor was the pharmacy manager, Megan John.

In June 2014 a pharmacy technician reported to the lead pharmacy worker that she had witnessed the claimant taking coffee from the convenience area of the store and returning to work with it without a receipt and the employee further noted that the claimant was not paying for the coffee in the pharmacy area by having another pharmacy worker ring up her transaction. The employee further stated that when she questioned the claimant, the claimant responded that she had already rang up the item. The employee also reported that when questioned about whether the practice violated company policy, the claimant had stated in effect that the practice was common.

On June 17, 2014 Heather Sipes, the lead pharmacy technician, personally observed Ms. Beaune take a cup of coffee from the convenience area of the Hy-Vee facility and proceed upstairs to clock in. Because the claimant did not have a receipt for the coffee and had not requested Ms. Sipes to ring it up, the lead pharmacy technician brought the matter to the attention of the store director. The store director alerted the company's loss prevention department and the claimant was further observed.

On July 3, 2014 the claimant was observed by loss prevention department employees and company security, removing a cup of coffee from the company's convenience area without paying for it and bringing the coffee with her as she clocked in and then began working. Because the claimant had made no attempt to pay for the coffee, prior to removing it from the convenience store and had made no attempt to pay for the coffee in the pharmacy area, the claimant was called to the store director's office and further questioned.

Ms. Beaune stated in response to questioning about the purchase of the coffee that the coffee had not been paid for yet. When asked if the claimant was aware of the rules of checking herself out, the claimant responded "Yes... and others do it." Company policy requires that employees obtain a purchase receipt for items being purchased by them from the company, prior to the use or consumption of the product. Company policy also prohibits employees from checking out immediate family members, friends, or themselves and warns employees that violation of this rule could result in disciplinary action up to and including termination.

On November 12, 2013 employees were provided an updated copy of the company's policies and the claimant acknowledged receipt of the policy and its contents. At that time the store director specifically advised all employees to make sure they paid for any items before consumption and keep their receipts. A short time thereafter, a management employee of the Hy-Vee store where the claimant was employed was discharged for consuming company property without paying for it in advance. The claimant and other employees were informed of the employee's discharge and the reason for it.

Ms. Beaune agrees that she obtained coffee from the Hy-Vee facilities convenience area on the morning in question and left the convenience area without paying for the coffee in advance. The claimant maintains that it was her intention to pay pharmacy employees for the coffee, but she began to wait on customers immediately and did not have the opportunity to pay for the coffee before confronted about the issue. The claimant denies violating the company policy against consuming company food or drink without purchasing the item in advance of its use or consumption but maintains that the practice is "common among employees."

## **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct, on the part of this claimant, 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).

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct. 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 the denial of unemployment insurance 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 claimant had been observed by another pharmacy technician taking coffee from the company's convenience area without paying for it and subsequently consuming the product. The pharmacy technician reported the conduct to the lead pharmacy technician, who also observed Ms. Beaune violating the company's purchase rule by taking coffee without paying for it and consuming the item. The claimant made statements to the employees that indicated that it was a practice to check herself out and statements indicating the practice of removing coffee without payment was common. Based upon these observations and statements, the lead pharmacy technician reported the matter to the store director who in turn had the claimant observed by loss prevention and security personnel. The claimant was again observed following her practice of removing company consumable products without paying for the product. The claimant was confronted and stated that she had not paid for the coffee yet and indicated that she had engaged in checking herself out when specifically asked about that practice. The claimant also again stated that she felt that the practice was common among employees.

While well aware that the claimant denies her intention was to consume the coffee without paying for it and that she did not have the opportunity to pay for the coffee that morning because she began ringing up customers, the administrative law judge concludes that the claimant had been observed independently on three or more occasions violating the company purchase rule and when questioned on two previous occasions, the claimant had indicated that her conduct should not have been of concern because "everyone does it."

The administrative law judge concludes and confirms that the employer has sustained its burden of proof in establishing that the claimant knowingly violated the employer's policy in reference to payment prior to removal of the property or consumption. It also establishes that the claimant did not believe that the company's rule against self-checking out was a rule that needed to be followed.

In view of the fact that the company rule had been specifically reiterated to the claimant and other employees by the store director in November 2013, and company employees had been specifically made aware that an employee had been discharged thereafter for violation of the rule, the administrative law judge concludes that the claimant was not reasonable in her belief that the employer would not enforce its rule that prohibited removal or consumption of company product prior to paying for the product through another worker. The claimant's conduct on July 3, 2014 followed a pattern that she had previously established in removing the product from the convenience area without paying for it. 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 the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 23, 2014 (reference 01) is affirmed. The claimant was discharged for misconduct in connection with her work. 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 is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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