

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DEBRA J CHAMBERS  
PO BOX 294  
ROCKFORD IA 50468-0294

HY-VEE INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

TALX UC EXPRESS  
#511  
3799 VILLAGE RUN DR  
DES MOINES IA 50317

Appeal Number: 06A-UI-02315-HT  
OC: 01/22/06 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated February 20, 2006, reference 01. The decision allowed benefits to the claimant, Debra Chambers. After due notice was issued a hearing was held by telephone conference call on March 22, 2006. The claimant provided a telephone number of (641)749-5485. The conference operator attempted to contact her at that number but the only response was an answering machine. The claimant did not participate. The employer participated by Assistant Store Director Al Bock, Night Stock Floor Manager Bob Hopkins, and Store Director Tracy Kading. Human Resources Manager Karee White observed the proceedings but did not offer testimony. Hy-Vee was represented by TALX in the person of David Williams.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Debra Chambers was employed by Hy-Vee from August 24, 2005 until January 24, 2006. She was a part-time night stock crewmember. At the time she was hired the claimant received a copy of the employers policies. Policy number 38(e) notified employees that failing to pay for food taken from the store to consume is grounds for discharge.

On January 22, 2006, Night Stock manager Diana Alexander sent an e-mail to Store Director Tracy Kading as part of her regular report to day managers. She reported receiving complaints from night stock crewmembers the claimant had been seen eating food while working. The items included oranges, cookies, candy, produce and deli items and five jars of baby food.

Mr. Kading had Assistant Store Director Al Bock interview members of the night stock crew and the complaints were verified. A meeting was held with Ms. Chambers on January 24, 2006, to ask her about the allegations. At first she denied any wrong-doing and claimed she had paid for the items, but could not recall which cashiers had done the transactions. Then she acknowledged she might have failed to pay for at least one item. The employer did not find her credible in comparison to the specificity provided by the other crew members and discharged her at the end of the meeting.

Debra Chambers has received unemployment benefits since filing a claim with an effective date of January 22, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant received a copy of the employer's policies and the disciplinary consequences for violating those policies. Failing to pay for food prior to consuming it, and eating while on duty, are dischargeable offenses. The employer has presented testimony and evidence sufficient to meet its burden of proof the claimant knowingly violated the anti-theft policy which is conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of February 20, 2006, reference 01, is reversed. Debra Chambers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$2,268.00.

bgh/tjc