

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARRIETT A CLAWSON**  
Claimant

**APPEAL NO. 11A-UI-07777-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 05/15/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Harriett A. Clawson (claimant) appealed a representative's June 7, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2011. The claimant participated in the hearing. Tina Witthoft appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 28, 2004. She worked part-time (but approximately 40 hours per week) as a night stocker/clerk. Her last day of work was the shift that ended on the morning of May 9, 2011. The employer discharged her later that day. The reason asserted for the discharge was being rude to a customer.

On the evening of May 8, the claimant reported for work at 10:00 p.m. and started working on a register. Within the first hour, the claimant had a customer who was disputing the price of an item. When the claimant verified the price was as stated, the customer indicated she did not have enough money to pay for the item. The claimant was trying to get the transaction voided and paged the assistant manager on duty, who was standing a short distance away speaking with another customer. When the assistant manager did not respond within a few minutes, as the claimant was becoming frustrated with the customers beginning to "stack up," the claimant called over to the assistant manager, saying, "Can I get some help over here, this customer does not have enough money." The assistant manager then came to deal with the transaction. The customer who the claimant was assisting was embarrassed; the customer who was behind her in the line later called the store to complain that the claimant had so embarrassed the initial customer that she had been crying out in the parking lot.

The claimant's general demeanor is and has been brusque. The employer had verbally cautioned the claimant in the past about being more careful, but the employer had never given the claimant any disciplinary action advising her that further problems could result in discharge.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the claimant's embarrassment of the customer on the evening of May 8. The claimant certainly lacks an awareness of the impact her conduct may have on others; as observed by the employer's witness, it is clear that the claimant's general demeanor lacks "couth," which may make her a bad fit for the job, but does not automatically mean her actions were "misconduct." Misconduct connotes volition. Huntoon, supra. The claimant had not previously been warned that future problems could result in termination, so as to suggest a further problem was intentional. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Under the circumstances of this case, the claimant's conduct on May 8 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. While the employer had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 7, 2011 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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