

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M HOECK
Claimant

APPEAL NO. 12A-UI-08042-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/03/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated June 28, 2012, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on August 8, 2012, in Davenport, Iowa. The claimant participated personally. The claimant was represented by Matthew Leddin, attorney at law. The employer participated by David Migiel, kitchen manager; Chad Bulman, manager perishables; and Timothy McCracken, human resources manager. The employer was represented by Bruce Burgess. The record consists of the testimony of Timothy McCracken; the testimony of David Migiel; the testimony of Chad Bulman; the testimony of Crystal Hoeck; Claimant's Exhibit A; and Employer's Exhibits 1 through 8.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates a chain of grocery stores. The claimant worked at the store located at 53rd Street and Utica Ridge Road in Davenport, Iowa. She has worked for the employer since January 2, 2001. Her last day of work was May 29, 2012. She was terminated on May 29, 2012. At the time of her termination, she worked as a full-time pay station clerk. A pay station clerk serves customers who are eating food at the in-store dining area.

The incident that led to the claimant's termination occurred on May 25, 2012. The employer received a complaint from a customer about the claimant. The customer was eating some food and looking at a newspaper. The claimant asked the customer if he was going to pay for the paper and said: "When you take a paper off the shelf you pay for it." The customer also reported that the claimant said something about not serving old people. The claimant denied saying anything about old people.

The claimant had received previous write-ups, warnings, and counseling concerning her attitude and interaction with customers and other employees. On May 21, 2012, the claimant had a disagreement with a customer over the price of some chicken he was purchasing. The claimant was instructed by a manager just to ring up the chicken for the price the customer wanted to pay and the claimant said that it was not the right price. The claimant wanted to look up the price. The claimant was told that she needed to take care of the customer and get him on his way.

On March 28, 2012, the employer held a meeting with the claimant and some other employees in the department. A complaint had been made by a customer that she felt uncomfortable eating there and that she was always being watched by the employees. The claimant was specifically told that her main job was to take care of customers and to be helpful and friendly. She was not to focus on making sure that the customer pays for what they get and nothing extra. The customer was to be helped as quickly as possible and that if there was a discrepancy in the price, the customer's position was to be accepted. (Exhibit 8)

A complaint concerning the claimant's attitude was made by a customer on January 21, 2012. According to the customer, the claimant made rude comments about her. (Exhibit 5) The claimant also received a written consultation on December 30, 2011, concerning her inappropriate attitude towards fellow employees. (Exhibit 4)

The employer has a written policy that the fundamentals of its business are: "honesty, integrity, friendliness, caring, sincerity, respect, ethics, morals, dedication, sharing, fairness, manners, dignity and ownership." (Exhibit 3)

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to establish policies and procedures for the conduct of its business and can reasonably expect an employee will adhere to those policies and procedures. The employer has the burden of proof to establish misconduct.

The evidence in this case established that the claimant knowingly violated her employer's policies and procedures on a continuing basis despite warnings and counseling from the employer. The claimant was specifically instructed that she was not supposed to get into disagreements with customers, particularly over prices and paying for items. The claimant was the subject of several customer complaints, and the overriding theme of those complaints was rudeness and poor attitude. The administrative law judge understands that rudeness and poor attitude can be quite subjective; but, in this case, the employer demonstrated a continuing and consistent pattern of behavior on the part of the claimant. The claimant, for whatever reason, wanted to make sure that customers did not get anything that was not paid for and, as a result, she got into disagreements with customers. She was specifically told to side with the customer and she did not do so. The final instance of misconduct was when she made a comment to an elderly customer about paying for a paper.

Employers who serve customers have a material interest in making sure that customers are satisfied and are treated politely by employees. The claimant materially breached that duty to the employer. Misconduct has been established. Benefits are denied.

DECISION:

The representative's decision dated June 28, 2012, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw