

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY L COLYER**  
Claimant

**APPEAL NO. 09A-UI-11060-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 06/28/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelly Colyer filed a timely appeal from a representative's decision dated July 27, 2009, reference 01, which denied benefits based upon her separation from Hy-Vee Inc. After due notice was issued, a telephone hearing was scheduled for and held on August 18, 2009. The claimant participated personally. The employer participated by Mr. Tim Speir, hearing representative, and witnesses Chuck Osmanski, store director, Ginger Wilkins, bakery manager, and Gail Graver, perishable manager. Employer's Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Ms. Kelly Colyer was employed by Hy-Vee Inc. from April 13, 1990, until June 1, 2009, when she was discharged from employment for failure to follow company policies. Ms. Colyer was employed as a full-time baker and was paid by the hour. Her immediate supervisor was Ginger Wilkins.

The claimant was separated from her employment with Hy-Vee Inc. after being suspended for a one-week period for a violation of the company's rule that prohibits employees from engaging in a conflict of interest with Hy-Vee Inc. Under the rule, employees are allowed to engage in outside employment or perform services as long the services do not conflict with the business interests of Hy-Vee Inc. Ms. Colyer had previously been specifically warned by the store manager, Mr. Osmanski, that her personal business of baking and decorating custom cakes was becoming a conflict of interest, as it was affecting Hy-Vee's business interests and customers. It had come to the attention of company management on numerous occasions that individuals were ordering cakes, attempting to pick them up, or otherwise asking for information related to Ms. Colyer's outside baking and that these activities were taking place at the Hy-Vee facility. The company had no objection to Ms. Colyer or other employees engaging in limited

outside business activities, and Ms. Colyer was informed that it would not be a conflict if she limited her outside baking sales to relatives and close friends. When the level of customers coming into the Hy-Vee facility to request, pick up, or obtain information on Ms. Colyer's outside baking activities became excessive after she had previously been warned, the claimant was suspended from work for a one-week period. The claimant was informed that the employer expected her to adhere to the company policy and would have been willing to accept an offer by Ms. Colyer to limit her sales to friends and relatives. The claimant was not willing to limit her baking activities and thus was separated from employment.

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

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

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.

The evidence in the record establishes that Ms. Colyer had been made aware of the company rule that prohibited employees from engaging in outside business activities that presented a conflict of interest with Hy-Vee Inc. The employer was reasonable in repeatedly reminding Ms. Colyer of the rule. The claimant, however, did not follow the counseling that had been given to her by Hy-Vee but instead continued to engage in outside baking and sales of baked goods to a care facility and to a number of customers who continued to come to the Hy-Vee facility to place, inquire about, or complete private orders with Ms. Colyer.

Based upon the level of contact by individuals who otherwise may have been Hy-Vee customers at the Hy-Vee facility itself, the administrative law judge concludes that there was a sufficient nexus or connection between the claimant's outside business activities and her employment with Hy-Vee to create a conflict of interest. The claimant's refusal to end or to limit her outside baking activities that conflicted with Hy-Vee showed a disregard for Hy-Vee's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are withheld.

**DECISION:**

The representative's decision dated July 27, 2009, reference 01, is affirmed. The claimant is disqualified until she has worked in and earned wages in insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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