

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J STOUT
Claimant

APPEAL NO. 13A-UI-10057-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/04/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Participation at Fact Finding

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's August 28, 2013, decision (reference 01) that concluded Mary Stout (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 1, 2013. The claimant participated personally. The employer was represented by Bruce Burgess, Hearings Representative, and participated by Randy Kruse, Store Director; Julie Staber, Manager of Perishables; and Bill Detweiler, Human Resources Manager. The employer offered Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 15, 2007, as a part-time floral clerk. The claimant signed for receipt of the employer's handbook on February 20, 2012. The employer prepared a written warning for the claimant on February 20, 2013, for giving poor customer service. The employer did not issue the claimant the written warning but talked to the claimant about improving her customer service after a complaint had been received. In March 2013, the employer talked to the claimant about giving good customer service after a complaint had been received.

On May 17, 2013, a family asked to have a floral spray delivered to a funeral home at 2:30 p.m. Her department head told the claimant to deliver the spray with the other flowers at 4:00 p.m. At approximately 2:35 p.m. the funeral director called the claimant and asked for the flowers. Rather than complying with the customer's request, the claimant started to explain that her supervisor had authorized delivery at 4:00 p.m. The funeral director became upset and hung up on the claimant. The funeral director called back and talked to another department head. The flowers were delivered within ten minutes. The other department head told the claimant that

when the funeral director asked for something, get the flowers out. The other department head did not care that the claimant's supervisor did not follow the customer's instructions. The employer did not issue the claimant any warning for the incident.

The claimant worked at another business. The claimant told her manager at her other employment that if she never had to talk to the funeral director again it would be too soon. Then she relayed the story of May 17, 2013. The manager was related to the funeral director. The funeral director became aware that the claimant was complaining about him and wrote a letter to the employer on June 15, 2013. The employer terminated the claimant on June 17, 2013.

The claimant filed for unemployment insurance benefits with an effective date of August 4, 2013. She received \$555.00 in benefits after the separation from employment. The employer participated personally at the fact finding interview on August 27, 2013, by Bill Detweiler.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded

the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally talked disrespectfully about an important customer of the employer. The employer could have lost business if the employer had lost this customer. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid. The claimant was overpaid \$555.00 in benefits.

DECISION:

The representative's August 28, 2013, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid. The claimant was overpaid \$555.00 in benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css