

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY A PALMER-WIGGS**  
Claimant

**APPEAL NO. 12A-UI-04053-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLLAR GENERAL**  
Employer

**OC: 03/04/12**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Dollar General, filed an appeal from a decision dated April 6, 2012, reference 01. The decision allowed benefits to the claimant, Kimberly Palmer-Wiggs. After due notice was issued a hearing was held by telephone conference call on May 3, 2012. The claimant participated on her own behalf. The employer participated by District Manager Cylas Hall.

**ISSUE:**

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

**FINDINGS OF FACT:**

Kimberly Wiggs was employed by Dollar General from December 7, 2009 until February 27, 2012 as a full-time store manager. On February 23, 2012, District Manager Cylas Hall was doing a routine inspection of the claimant's store. At one point he noticed a check buried under a pile of papers on the manager's desk. The check was written on January 25, 2012, for \$111.00.

An investigation was conducted which discovered the claimant had not deposited the check the day it was received. This was discovered by the manager who came on duty next and he left a note for Ms. Wiggs. She did not deposit it but left a note on it for the closing manager that day to deposit it with the receipts from January 26, 2012.

The claimant was behind on the paperwork for the store, the deposit logs and other similar matters. She maintained that was the reason she had not noticed the check sitting on her desk because it was covered by a pile of papers. Mr. Hall watched the surveillance video from the period of time in late January and at one point the video clearly showed the check sitting on Ms. Wiggs' desk, and showed her picking it up, looking at it and then moving it to the other side of her desk. When the regional manager interviewed the other employees the assistant manager said he had specifically drawn the claimant's attention to the fact the check had not been deposited but she still did nothing. She told Mr. Hall that she was behind on her paper work and that the bank had said the deposits "evened out."

Mr. Hall concluded his investigation on Friday, February 24, 2012, and sent the materials to the regional human resources office. He does not have the authority to discharge a store manager without first consulting with the corporate office. The human resources approved the recommendation for discharge the morning of Monday, February 27, 2012, and Mr. Hall notified the claimant she was fired. Her conduct was considered a violation of store operations policies regarding protecting the assets of the employer, making deposits and securing funds and failing to properly keep the records of the store up to date.

Kimberly Wiggs has received unemployment benefits since filing a claim with an effective date of March 4, 2012.

#### **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.

The claimant was responsible to keep the assets of the employer safe and secure, to make deposits of the daily revenue to the bank and to keep the records and paperwork up to date. Instead she failed to make a deposit, failed to record the necessary deposit information into the daily logs and left an uncashed check on her desk for a month.

Her explanations are unconvincing. There is adequate testimony that she knew well after January 26, 2012, the check remained uncashed. She failed to act promptly and professionally

to the situation, but was content to let paperwork pile up on top of the check until it was only found by the district manager some time later. The claimant was negligent in her duties and responsibilities. The employer has the right to expect each employee to work to the best of their ability and to exercise reasonable prudence in the executive of those duties. The claimant's failure to reconcile the banking deposits with the daily intake, to make sure the check got cashed and to otherwise exercise good business ethics is conduct not in the best interests of the employer. She is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of April 6, 2012, reference 01, is reversed. Kimberly Wiggs is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs