

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAKEISHA S COSEY**  
Claimant

**APPEAL NO. 12A-UI-05106-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
**DOLLAR GENERAL**  
Employer

**OC: 04/08/12**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lakeisha Cosey filed a timely appeal from the April 30, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 24, 2012. Ms. Cosey participated. Doug Owen, District Manager, represented the employer. Exhibits One through Six were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Lakeisha was employed by Dollar General as a full-time Lead Sales Associate until April 6, 2012, when Doug Owen, District Manager, discharged her for violation of the employer's employee purchase policy. On April 2, 2012, the employer learned that Ms. Cosey had on multiple occasions consumed store merchandise without paying for it first. On April 2, 2012, Ms. Cosey had a cashier ring up four bottles of water, four bottles of Gatorade, a pint of milk, a burrito, and a bag of pecan halves. Ms. Cosey presented the clerk with an empty water bottle and an empty Gatorade bottle so that the clerk could scan each bottle four times. Ms. Cosey presented the clerk with a pint of milk that was mostly consumed. Ms. Cosey presented the clerk with an open bag of pecans. Ms. Cosey presented the clerk with a burrito that she had just collected the employer's display cooler and to which she later returned to the cooler. The total retail value of the merchandise was \$13.45. On April 2, 2012, after having the cashier ring up the merchandise, Ms. Cosey tendered payment for the merchandise with an EBT/food stamp debit card. An Assistant Manager observed the transaction and reported it up the chain of command.

The employer has a written employee purchase policy contained in its employee handbook. Ms. Cosey had received the handbook, and acknowledged receipt of the handbook, in March 2010 and in March 2011. The employee purchase policy required that all merchandise intended for the employee's personal use or consumption "must be paid for before it is used or

consumed. The receipt for the purchase must be given to the employee and the employee must tape the receipt to the item. Failure to produce the receipt upon request may result in disciplinary action up to and including termination.” Ms. Cosey knew the policy, but had knowingly violated the policy on multiple occasions. On April 6, Ms. Cosey admitted to taking and consuming the food items prior to paying for them. Ms. Cosey explained that she would get the items when she was low on funds and pay for them later when she got her food stamps or paycheck. The employer paid Ms. Cosey weekly. Ms. Cosey cannot say when she took and consumed the items in question, but believes it was within two weeks prior to April 2, 2012.

At the time Mr. Owen interviewed Ms. Cosey on April 6, he asked her to write a statement. Ms. Cosey declined to do so. Ms. Cosey asserted that other employees had engaged in the same prohibited activity. No member of management had authorized Ms. Cosey to take or consume merchandise without following the employee purchase policy.

### **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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Code section 714.1 outlines the several ways in which a person can commit the crime of theft in the state of Iowa. Iowa Code section 714.1(1) and (2) provide, in relevant part, as follows:

714.1 Theft defined.

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.

While Ms. Cosey prefers to think of it in different terms, Ms. Cosey’s actions did in fact constitute theft under Iowa Code section 714.1(1) and (2). Any right Ms. Cosey had to possess Dollar General merchandise—unless she had paid for it first according to the employer’s policy—was the limited right to possess the merchandise as an agent of the employer and for the sole purpose of disposing of those items consistent with the employer’s interests. What Ms. Cosey did instead was misappropriate the employer’s property by converting it to her own use. Payment sometime after the fact was merely restitution for the merchandise Ms. Cosey had earlier misappropriated. It was not proper payment for the employer’s merchandise. The employer is left to wonder whether Ms. Cosey provided restitution for everything she had taken from the employer. All of this supports the reasonableness of the employer’s employee purchase policy. By violating that policy in multiple instances, Ms. Cosey acted with willful and wanton disregard of the employer’s interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Cosey was discharged for misconduct. Accordingly, Ms. Cosey is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer’s account shall not be charged for benefits paid to Ms. Cosey.

**DECISION:**

The Agency representative's April 30, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs