

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE B CARR
Claimant

APPEAL NO. 11A-UI-05055-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

**OC: 03/13/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 11, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 12, 2011. Claimant participated. The employer participated by Shirlene Ensey, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Catherine Carr was employed by Dollar General from May 9, 2010 until March 11, 2011 when she was discharged for repetitive cash handling procedure violations. Ms. Carr was employed on a full-time basis and last held the position of lead associate. Her immediate supervisor was Shirlene Ensey.

Ms. Carr was discharged following a cash handling error that took place on March 9, 2011. On that date the claimant had certified that she had pre-counted her cash drawer that day and that the amount was correct. Subsequently it was determined that Ms. Carr was \$10.00 over in her drawer. It was then determined that the claimant had not in fact counted her drawer at the beginning of her shift as required and had intentionally acknowledged on a company form that she had done so. Because Ms. Carr had received three previous warnings for failure to properly follow cash handling procedures, she was discharged from employment. Ms. Carr has no explanation for her failure to count the drawer or for her acknowledgement that she had done so.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

Iowa Code § 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 misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). What constitutes misconduct justifying termination of an employee and what conduct warrants a denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). When based upon carelessness, the carelessness must actually indicate a "wrongful intent" or be wanton in nature to be disqualifying. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Inasmuch as the evidence establishes that Ms. Carr had been specifically warned on three previous occasions and that the claimant intentionally failed to count her drawer on the day in question, the administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying misconduct. In addition to intentionally failing to count her drawer, Ms. Carr signed a form verifying that she had done so. The claimant was aware that the statement was inaccurate and not true. This conduct shows a disregard for the employer's interest and standards of behavior that an employer has a right to expect under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 11, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs