

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CALLIE J ATHEY**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 18A-UI-12343-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/25/18  
Claimant: Appellant (1)**

Iowa Code §96.5(2)a – Discharge Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 17, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for theft of company property. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2019. Claimant participated and testified. The employer did not participate. The employer's participant, Nic Weber, answered the initial call, but he almost immediately disconnected. He did not answer the phone when two attempts were made to reconnect with him and did not make further contact with the Appeals Bureau. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 26, 2015. Claimant last worked as a full-time store manager. Claimant was separated from employment on November 28, 2018, when she was discharged.

On November 27, 2018, a customer, who was also a former employee, was in the store while claimant and two other employees were purchasing "penny items." Penny items are seasonal items the employer sells that are marked down on clearance to one penny. The standard operating procedures prohibit employees from purchasing penny items. As a manager claimant had been trained on and was aware of this prohibition. The former employee reported the purchases to the employer and loss prevention investigated. Once the information was confirmed, claimant and the other two employees were separated from employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The claimant was a member of management. As such, she was trained on and understood the employer's standard operating procedures, including the policy that prohibited employees from purchasing penny items. Not only did claimant ignore this policy and purchase such items herself, but she also facilitated two other employees in engaging in the same behavior. Claimant's behavior is a violation of the employer's policies and shows a deliberate disregard for the best interest of the employer. This is disqualifying misconduct.

**DECISION:**

The December 17, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs