

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY K LAMBIRTH
Claimant

APPEAL NO. 07A-UI-04419-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

**OC: 04/08/07 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dollar General filed a timely appeal from an unemployment insurance decision dated April 20, 2007, reference 01, that allowed benefits to Ashley K. Lambirth. After due notice was issued, a telephone hearing was held May 14, 2007, with Store Manager Greg Trojahn participating for the employer. The claimant did not provide a telephone number at which she could be contacted. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ashley K. Lambirth was employed by Dollar General from November 5, 2006 until approximately March 26, 2007. She last worked as assistant manager.

The final incidents leading to her discharge were her absence from work on March 24 and March 25, 2007. Ms. Lambirth was incarcerated, facing charges of possession of drugs. She had also been absent for “personal reasons” for an extended period in March. Store Manager Greg Trojahn discharged Ms. Lambirth because of her attendance as well as the criminal charges being filed against her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence establishes a final incident of absenteeism covering two days plus prior absences for personal reasons. This is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

There has been no overpayment because Ms. Lambirth has received no benefits since filing her claim effective April 8, 2007.

DECISION:

The unemployment insurance decision dated April 20, 2007, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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