

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA S RICKETTS
Claimant

APPEAL NO. 06A-UI-11437-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
DOLLAR GENERAL
Employer

OC: 10/22/06 R: 04
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Dollar General, filed an appeal from a decision dated November 20, 2006, reference 02. The decision allowed benefits to the claimant, Sandra Ricketts. After due notice was issued, a hearing was held by telephone conference call on December 14, 2006. The claimant participated on her own behalf. The employer participated by Manager Bonita Davis.

ISSUE:

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

FINDINGS OF FACT:

Sandra Ricketts was employed by Dollar General from July 13, 2005 until May 15, 2006. She was a part-time sales associate. In April 2006 Ms. Ricketts was approved for approximately 30 days of medical leave because she needed to have surgery for a non-work-related condition. The surgery was delayed and she could not return to work within the time frame specified by the employer and was notified by a letter from the corporate office that she was discharged on May 15, 2006.

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer has failed to establish any willful and deliberate misconduct on the part of the claimant. The fact she was not able to return to work as scheduled because her surgery had been delayed cannot be considered to be misconduct, as it was not volitional. Disqualification may not be imposed.

DECISION:

The representative's decision of November 20, 2006, reference 02, is affirmed. Sandra Ricketts is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw