

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMINE CARTER
Claimant

APPEAL NO. 11A-UI-05050-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 03/20/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 8, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 12, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Frank Sposeto, district manager, and Ms. Tanisha Byrd, store manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jasmine Carter was employed by Family Dollar Stores from May 24, 2010, until March 20, 2011, when she was discharged from employment. Ms. Carter held the position of full-time assistant manager and was paid by the hour. Her immediate supervisor was Tanisha Byrd.

Ms. Carter was discharged after she violated company policy and a specific warning that had been given to her and other employees regarding fraudulent authorization of pre-paid telephone cards. In training, Ms. Carter was specifically instructed not to authorize or dispense any company merchandise without actual currency payment for the authorization or the item at the time. On March 19, Mr. Sposeto sent the claimant and all other area employees a specific warning e-mail that a telephone scam was taking place regarding pre-authorization of telephone cards. Employees were warned not to be duped by the scam and were expected to follow company policy requiring the payment for any authorization or purchase. Although specifically trained and warned, Ms. Carter nevertheless authorized \$500.00 in pre-paid phone cards by telephone on March 20, 2011. The claimant on five separate instances that day authorized pre-paid phone cards without being paid for them. The claimant authorized the phone cards based upon a telephone "scam" of the exact nature that she had been warned about one day previous. Based upon what the employer considered to be wanton carelessness on the part of Ms. Carter, she was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

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

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

Inasmuch as the evidence in the record establishes that Ms. Carter had been trained on the company's policy requiring a cash transaction to take place before authorization or dispensing of company product and the claimant had been very specifically warned the previous day, the administrative law judge concludes that the claimant's carelessness was wanton in nature and disqualifying.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated April 8, 2011, reference 01, is reversed. 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, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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