

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARICELA MORALES
Claimant

APPEAL NO. 09A-UI-14871-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

OC: 11/23/08
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dollar General filed an appeal from a representative's decision dated September 24, 2009, reference 06, which held that no disqualification would be imposed regarding Maricela Morales' separation from employment. After due notice was issued, a hearing was held by telephone on November 3, 2009. Ms. Morales participated personally. The employer participated by Carrie Tomlinson, Store Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Morales was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Morales' last period of employment with Dollar General was from June 10 until September 10, 2009. She was a full-time sales associate. She was discharged due to cash discrepancies. She received a verbal warning on July 20 because she was \$10.70 short. She received a written warning on August 29 because she was \$9.07 short. This shortage occurred because she inadvertently gave the customer's check back to the customer. Ms. Morales received a final written warning on August 31 because she was over by \$9.75.

Ms. Morales was responsible for counting the day's proceeds at the end of the day on September 6. Although the individual registers balanced, there was a shortage of \$9.75 when she counted out the funds. Because she was the person counting the day's money, the shortage was attributed to her. As a result of the final shortage on September 6, she was discharged on September 10, 2009. The above matters were the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, Ms. Morales' discharge was triggered by the fact that she was \$9.75 short when she counted out the day's money from September 6.

The evidence failed to establish that Ms. Morales was responsible for the shortage of September 6. Her own register balanced and, therefore, the shortage was not caused by her mishandling money. The shortage was attributed to her solely because she was the individual who counted the money for the day. Because there was no direct link between Ms. Morales and the missing funds, it is concluded that the employer failed to establish misconduct on her part on September 6. The next most prior cash discrepancy was on August 31, which would not be considered a current act in relation to the September 10 discharge date.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to sustain its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated September 24, 2009, reference 06, is hereby affirmed. Ms. Morales was discharged by Dollar General but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css