

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEIGHIA M MCKENZIE
Claimant

APPEAL NO. 13A-UI-02861-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 02/03/13
Claimant: Respondent (2-R)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Dolgencorp, filed an appeal from a decision dated February 28, 2013, reference 01. The decision allowed benefits to the claimant, Leighia McKenzie. After due notice was issued, a hearing was held by telephone conference call on April 9, 2013. The claimant participated on her own behalf. The employer participated by District Manager Mike Williams.

ISSUE:

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

FINDINGS OF FACT:

Leighia McKenzie was employed by Dolgencorp from June 16, 2011 until January 25, 2013 as a full-time lead associate. She successfully completed the training module for cashiers after she was hired. Included in the training information is the company policy which states "starter" checks are not to be accepted. These are the checks given to bank customers who have just opened a checking account and do not contain any personal information such as name, address and phone number of the customer. In addition, cashiers are not to accept checks which the register computer declines.

On December 28, 2012, Ms. McKenzie was acting as lead associate, a "key carrier" or management position, in the Fort Dodge, Iowa, store. A cashier called her to the register because a customer's starter check had been rejected. Ms. McKenzie accepted the check by pushing the "cash" entry on the register and accepting the check as cash. The check was for an amount in excess of \$200.00.

The store offered the check to the bank three times as required and it was returned for insufficient funds each time. The corporate office was then notified and on January 24, 2013, e-mailed District Manager Mike Williams to investigate. He went to the store on January 25, 2013, and watched the surveillance video for the time and date of the transaction. He saw the claimant process the check after the cashier had summoned her. He intended to interview her

when she came to work that day but she called to say she would be late due to car problems. Mr. Williams questioned her at that time and she said she could not remember the transaction. He informed her she was discharged.

Leighia McKenzie has received unemployment benefits since filing a claim with an effective date of February 3, 2013.

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 claimant acknowledged she had taken the required training module for a cashier, even if she may not have yet completed the module for "key carriers." The cashier module contains the information relevant to this case. Cashiers are not to accept starter checks or checks which the computer register has declined. Ms. McKenzie overrode the computer's rejection of the check by processing it as cash, resulting in a loss of over \$200.00 to the store.

Her assertion she did not know it was a "starter" check because the customer called it something else is not sufficient excuse. It was evident the check did not contain sufficient information such as customer's name and address, and it could be nothing else but a starter check. She ignored the employer's policies regarding check handling. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The event was one month prior to the discharge, but this was due strictly to the required process of tendering the check to the bank three times to determine if it would be accepted. Once corporate office was notified it immediately had the district manager investigate, which he did the very next day. There was no unreasonable delay under these circumstances.

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 rule 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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 28, 2013, reference 01, is reversed. Leighia McKenzie is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll