

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA K MAXWELL
Claimant

APPEAL NO. 10A-UI-03464-NT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

DOLGENCORP LLC
DOLLAR GENERAL
Employer

OC: 02/07/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 1, 2010, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone conference hearing was conducted on April 15, 2010. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Wally Miller, Jr. The employer participated by Mr. Bill Eskildsen, store manager.

This nunc pro tunc decision is being issued so as to correct an error in the statement of the case that listed the employer as the appellant and to thus also change the disposition to a reversal.

ISSUE:

The 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: Pamela Maxwell was employed by Dollar General Stores from September 8, 2000 until January 29, 2010, when she was discharged from employment. Ms. Maxwell worked as a full-time lead sales associate and was paid by the hour. Her immediate supervisor was Mr. Eskildsen.

The claimant was discharged when the employer believed that Ms. Maxwell had engaged in the intentional falsification of her time card on January 3, 2010. It had been alleged by another employee that Ms. Maxwell had reported late that morning. The claimant's corrected time card showed the arrival time of 7:30 a.m. Because the company's alarm system had not been deactivated that morning until 7:45 a.m., the employer believed that Ms. Maxwell had intentionally misreported her arrival time. After reviewing the matter, a decision was made at the corporate level to discharge Ms. Maxwell from her employment. Although the event took place on January 3, 2010, the claimant was not discharged until January 29, 2010.

On the morning in question Ms. Maxwell arrived and immediately began performing duties associated with the store's opening schedule for 8:00 a.m. The claimant had neglected to immediately clock in. When Ms. Maxwell remembered that she had not clocked in upon her arrival, she made a corrective entry on her time card reflecting her belief that she had arrived on or about 7:30 a.m. that day.

Prior to her discharge, the claimant had received no warnings or counselings from the employer and there had been no previous incidents of the claimant failing to follow company procedures or falsifying company documentation. Ms. Maxwell was considered to be a good and valued employee.

REASONING AND CONCLUSIONS OF LAW:

The issue before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits based upon a current act of misconduct. It is not.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The evidence in the record establishes that there was a discrepancy in time reporting on the part of the claimant on January 3, 2010. Ms. Maxwell had arrived at work that day and had deactivated the company's alarm system at approximately 7:45 a.m. that morning. The claimant was engaged in a variety of activities related to the store's scheduled opening for 8:00 a.m. that morning when the claimant realized that she had not clocked in upon her arrival. She corrected her time card to reflect her belief that she had reported on or near 7:30 a.m. Ms. Maxwell has provided a satisfactory explanation as to the activities that she performed that morning after her arrival and her reasonable belief that the time she reported for her arrival was reasonably accurate.

Although the administrative law judge recognizes that the claimant's failure to accurately report her work time was a violation of company policy, the administrative law judge concludes that the claimant's conduct was an isolated instance of poor judgment in an otherwise unblemished employment record.

The administrative law judge also notes that although the incident took place on January 3, 2010, Ms. Maxwell was not discharged until four weeks later. There is no evidence of any misconduct during the intervening period of time. The administrative law judge thus concludes the claimant's discharge on January 29, 2010 was not for a current act of misconduct as required by 871 IAC 24.32(8). Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 1, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs/kjw