

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA L JAACKS
Claimant

DOLGENCORP LLC
Employer

APPEAL 15A-UI-06563-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/15/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 28, 2015, (reference 02) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2015. Claimant participated. Employer participated through Regional Loss Prevention Manager Christie Burkhart.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a sales associate from November 8, 2014, and was separated from employment on May 14, 2015, when she was terminated.

Claimant worked at employer's store located in Nashua, Iowa on April 21, 2015. That evening, the tobacco log revealed the store was short two packs of cigarettes. The next day, on April 22, 2015, the Nashua store manager reviewed the store's closed circuit television footage and saw two transactions in which it appeared to him that claimant gave the respective customers one pack of cigarettes without ringing them up. In both incidents, the customers bought and paid for other products, including an additional pack of cigarettes. In other words, Jaacks handed the customer two packs of cigarettes but only charged for one. No copy of surveillance video, still photos, or records regarding the cash register were provided.

On May 14, 2015, Regional Loss Prevention Manager Christie Burkhart interviewed claimant regarding the transactions via telephone. Burkhart originally planned to interview claimant on May 3, but was ill that day. During the phone call, claimant stated she did not remember the transactions in question. Claimant asked to see the video surveillance footage, but employer did not show it to her. Claimant agreed to pay for the cigarettes on the assumption that such an agreement would keep her employed and in acknowledgement she may have made a mistake. At the conclusion of the investigation, Burkhart recommended claimant be

terminated for violating employer's policy on Failure to Protect Company Assets. Store Manager Nathan Hammitt terminated claimant shortly thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability.

Here, employer has not established claimant's actions were willful or intentional. Likewise, employer did not establish claimant's actions were careless or negligent to the point of indicating wrongful intent. Thus, employer did not meet its burden to establish claimant engaged in misconduct.

DECISION:

The May 28, 2015, (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Decision Dated and Mailed

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