

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01713-DWT
OC 01/11/04 R 03
Claimant: Respondent (2/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

LEANN K ALLSUP
416 N 4TH ST
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STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

DOLGENCORP INC
DOLLAR GENERAL
C/O COMP TAX MGR
PO BOX 34150
LOUISVILLE KY 40232

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Dollar General (employer) appealed a representative's February 12, 2004 decision (reference 01) that concluded Leann K. Allsup (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2004. The claimant participated in the hearing with Jessica Lockard as a witness. T. J. Heller, the district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2002. She worked full time as the store manager. Heller became the claimant's supervisor in June 2003.

The employer has yearly inventories. The July or August 2003 inventory indicated the claimant's store had a high amount of shrinkage, which usually means there is a great deal of merchandise leaving the store without being paid for by anyone. In September the employer told the claimant her store was considered a watch store.

The employer continued to monitor the claimant's store. The employer concluded a greater percentage of merchandise was leaving the store without being paid for. In January 2004, the employer's loss prevention employee talked to the claimant. On January 12, 2004, the claimant signed a statement indicating that over the last two years she had taken over \$17,000.00 worth of merchandise from the store without paying for it. After the claimant submitted her signed confession, the employer discharged her on January 12, 2004. Charges have been brought against the claimant, but have not been resolved.

The claimant established a claim for unemployment insurance benefits during the week of January 11, 2004. She filed claims for the weeks ending January 17 through March 6, 2004. She received her maximum weekly benefit amount of \$252.00 each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The parties do not dispute that the employer discharged the claimant. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The first issue that must be resolved is the claimant's credibility. On January 12, 2004, the claimant wrote a statement that since she had been employed she took about \$17,000.00 worth of merchandise from the employer because she forgot to pay for it. Charges have been brought against the claimant, but have not been resolved as of the date of the hearing. During the hearing, the claimant denied taking any merchandise without first paying for it with the exception of a bag of chips. The claimant asserted the voluntary statement she made on January 12, 2004 was false. The claimant contended she made a false statement because she was scared. Even though the claimant may have been intimidated and scared by the loss prevention employee and the situation she was facing, she confessed in a written statement that she had taken the employer's merchandise without paying for it and even put the dollar

amount she had taken. Since the claimant has pending charges against her, she has a motive to recant her January 12 written statement. Based on the claimant's conflicting statements, she is not credible. The fact she wrote the January 12 confession is persuasive that she knowingly took merchandise from the employer during her employment, which amounts to work-connected misconduct for unemployment insurance purposes. As of January 11, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 17 through March 6, 2004. She has been overpaid a total of \$2,016.00 in benefits for these weeks.

Based on the testimony presented during the March 8 hearing, there is an issue of gross misconduct that should be addressed by the Claims Section. Therefore, this issue is remanded to the Claims Section to investigate and issue a written decision that both parties receive.

DECISION:

The representative's February 12, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 11, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 17 through March 6, 2004. She has been overpaid a total of \$2,016.00 in benefits she received for these weeks. The issue of whether the claimant committed gross misconduct is remanded to the Claims Section to investigate and issue a written decision.

dlw/b