

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA R TERLISNER
Claimant

DOLGENCORP LLC
Employer

APPEAL 20A-UI-11556-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Dolgencorp (employer) appealed a representative's September 8, 2020, decision (reference 01) that concluded Amanda Terlisner (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Stefanie Young, Store Manager.

The employer offered and Exhibits One and Two were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was rehired on January 14, 2020, as a full-time lead sales associate. She previously worked for the employer at least one year prior to her second term of employment. The employer had a handbook but the claimant did not receive a copy during her second period of employment. It is unknown whether the claimant participated in computer-based learning in her first or second period of employment.

The store manager noticed the claimant's register was the highest for suspect transactions. Sometimes employees shared cash registers. The employer did not issue the claimant any

warnings during her second period of employment. On July 7, 2020, the store manager sent the claimant a text that said, "You are running high on price modifications. It needs to come to a stop".

On July 19, 2020, a customer showed the store manager a receipt indicating she paid half-price for an item. The customer felt guilty and offered to pay full price. The customer searched for other receipts from the claimant and brought them to the employer. The receipts from March 27, 29, April 1, 3, 28, May 14, and July 19, 2020, showed markdowns made by the claimant's that the store manager considered inappropriate. On July 21, 2020, the store manager terminated the claimant for marking items down. The store manager was not sure what policy this violated.

The employer did not participate in the fact-finding interview on September 4, 2020, because the representative company, Talx UCM Services, did not give the employer notice of the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

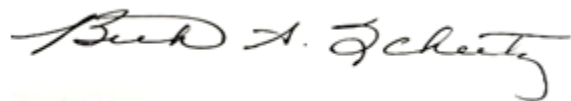
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In this case, the employer did not issue the claimant a handbook with the employer's policies or a written warning. The text message the employer sent the claimant was an acknowledgement that the employer knew of the behavior. It did not warn the claimant what would happen to her if the behavior continued. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's September 8, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

November 19, 2020
Decision Dated and Mailed

bas/mh