

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MISTY SORTER
Claimant

DOLGENCORP LLC
Employer

APPEAL 19A-UI-08688-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 4, 2019, the employer filed an appeal from the October 24, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 27, 2019. Claimant participated. Employer participated through store manager Jim Musser.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 6, 2016. Claimant last worked as a full-time assistant store manager. Claimant was separated from employment on September 23, 2019, when she was terminated.

Employer has a policy on Shoplifter Stops. The policy encourages managers to attempt to detain suspected shoplifters by asking the suspected shoplifter to go to the register area. The policy then requires the manager to call law enforcement. The policy states that if a suspect leaves the store, a store manager should not go outside of the store to stop a suspected shoplifter. The policy does not address physical attempts at keeping the shoplifter from leaving the store. Claimant was aware of the policy.

On September 22, 2019, claimant was working. Three children ages 10 to 12 were inside the store blatantly shoplifting. An adult male who was with the children was outside in the parking lot speaking to claimant's co-worker, who was on break. One child left the store and dropped

stolen merchandise in the parking lot. Claimant went outside and retrieved the merchandise and told her co-worker and the adult male that she needed help in the store. Claimant walked back into the store and called law enforcement. Claimant approached the two remaining children who were stuffing candy bars into their pockets. Claimant took the candy bars and told the children to leave. The children left the store. Claimant told the adult and the children not to come back in and that the police were on their way.

One of the children came back into the store and started to take more candy bars. Claimant called 911. The other two children and the adult were walking toward the front door, trying to enter the store. The dispatcher instructed claimant to lock the door. Fearing for her own safety, claimant did so. The minor child who was still in the store then began attacking claimant, pushing, biting, and pulling her hair. Claimant tried to push the child off of her. Either claimant or the child unlocked the door and the child exited the store. Claimant then locked the door again until law enforcement arrived.

After the incident occurred, claimant contacted store manager Jim Musser and reported what happened. Musser reviewed surveillance footage and reported the incident to the employer's human resource department. The human resource department instructed Musser to terminate claimant.

Employer had never previously disciplined claimant for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant followed the instructions of a 911 dispatcher when she feared for her own safety while working in one of employer's stores. Claimant only tried to defend herself when being physically assaulted by a child. Claimant handled an emergency situation the best way she could and with the best interests of the employer and safety of herself and her co-worker in mind. Employer failed to establish claimant was terminated for misconduct.

Benefits are allowed. Claimant has not been overpaid benefits. The issues regarding overpayment will not be discussed further.

DECISION:

The October 24, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 3, 2019
Decision Dated and Mailed

cal/scn