

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

APRIL R PUTMAN

Claimant,

and

DOLGENCORP LLC

Employer.

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HEARING NUMBER: 11B-UI-01962

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE EIIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, April R. Putman, worked for Dollar General from August 2010 through November 17, 2010 as a full-time assistant manager. (Tr. 3, 6) On early October, the claimant left cash on the counter (Tr. 4, 7), which resulted in the employer's implementing a policy for cash handling beginning October 5, 2010. (Tr. 4) The employer issued a verbal warning to her for the matter. (Tr. 4, 10) On October 27th, Ms. Putman gave her key to an employee to retrieve something in the back and return the key to her. (Tr. 11) She subsequently received a warning for giving her keys to an unauthorized person. (Tr. 4, 8, 10) Ms. Putnam did not know this was against protocol as she had seen Billy Opperman hand his keys to other unauthorized personnel. (Tr. 8, 11)

On November, 17, 2010, the employer came to the store first thing in the morning to find "...the safe was open, the office door was unlocked, and the backdoor was unlocked..." (Tr. 4, 11, 12) Ms. Putman was the employee responsible for closing the store the night before. (Tr. 4, 6) There were no funds missing. When the claimant arrived, the employer held a conference about the incident in which she denied all the employer's accusations. (Tr. 6-7) The employer indicated that the store's video surveillance camera showed the safe open (Tr. 12), but the claimant was not allowed to view it. (Tr. 10)

Ms. Putman believed she could not have possibly left the backdoor open because in order to leave the building, she had to lock it first before putting in the code for the alarm, which would go off if this procedure is not done within 60 seconds. (Tr. 7, 8, 9) The employer terminated her for failing to protect the company's assets. (Tr. 5, 6)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to

misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The employer argues that the claimant received two prior warnings regarding her alleged failures to secure company property. However, the claimant provided a cogent argument that she had no knowledge that she couldn't provide an employee with keys for a limited purpose, and of which were returned to her after that purpose had concluded. She had witnessed Opperman pass his keys to purportedly unauthorized personnel, himself (which he did not dispute) (Tr. 8, 11), thus she could not be reasonably held accountable for violating a policy for which she received no training and was apparently a common practice with the store manager.

As for the final act, the claimant vehemently denies all allegations. And while she may have been the last person to leave the previous night, the record establishes that other personnel had key access to the places that were left unsecured. (Tr. 11) The employer's argument that the video surveillance tape shows no other person entered after close lacks merit. Not only did the employer deprive the claimant of a viewing of the result of her alleged wrongdoing, the employer failed to produce this recording at the hearing, which could have been probative of their case. Consequently, we find the employer's description of the security video unpersuasive. (Tr. 13) While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, we conclude that the employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated March 17, 2011 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/kk