

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAPULA R JOHNSON
Claimant

APPEAL NO: 12A-UI-06614-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC/DOLLAR GENERAL
Employer

OC: 05/13/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Japula R. Johnson (claimant) appealed a representative's June 4, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from DolgenCorp, L.L.C./Dollar General (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2012. The claimant participated in the hearing. Jackie Boudreaux of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, David Leonard and Chastity Bergman. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on August 13, 2007. She worked full time as sales associate at the employer's Waterloo, Iowa store. Her last day of work was May 16, 2012. The employer discharged her on May 17, 2012. The stated reason for the discharge was violation of the employer's workplace violence rule by the making of a threat.

On May 15 the claimant became upset because her paycheck was short about six hours to cover drive time for days she had worked at one of the employer's locations in another community. The store manager, Bergman, told her there was nothing she herself could do about it, that the matter would have to be dealt with by the district manager, Leonard, who was at a conference and would not be back to handle such matters until May 17. That evening the claimant called Bergman at home asking for Leonard's phone number, and sent a message indicating that someone had better answer for the mistake.

On May 16 the claimant came in to work at about 7:30; she was scheduled to work until 4:00 p.m. At about 11:30 p.m., as Bergman was speaking with another employee, claimant told Bergman that she was going to leave at 1:00 p.m. Bergman followed the claimant up towards the check out area, and off to the side told the claimant that in the future if the claimant needed to leave early she should ask to discuss it, rather than announce that she was leaving. The claimant became extremely upset and agitated, and brought up again how she felt she was being cheated out of the six hours the employer was to pay her. When the claimant became so disruptive that a customer and another employee nearby were disturbed, Bergman told the claimant, "You need to go home." The claimant continued to scream, and told Bergman, "I'll find you outside," and then left.

Bergman contacted Leonard and informed him what had happened, indicating that she had felt threatened. Leonard spoke to both the customer and the other employee who were nearby, and they corroborated Bergman's report, although they indicated they heard the claimant say, "I'll see you outside," as compared to "I'll find you outside." On May 17 when Leonard met with the claimant, she acknowledged that when people get upset, "you say things you shouldn't," which he took as an acknowledgement. As a result of the threat, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer has established by a preponderance of the evidence, by both first hand testimony and corroborating second hand testimony, that the claimant did make a threatening statement toward the store manager. The claimant's making of such a statement shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 4, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 17, 2012. This disqualification continues until the claimant 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs