

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANINE R STORM
Claimant

APPEAL NO. 09A-UI-16713-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

**Original Claim: 10/04/09
Claimant: Respondent (2/R)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 26, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because she had been discharged for nondisqualifying reasons. A telephone hearing was held on December 11, 2009. The claimant participated in the hearing. Tom Hoden, the manager, appeared on the employers' 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on April 11, 2005. The claimant worked as a full-time lead associate. The employer's policy informs employees the employer starts its progressive discipline when there is a variance of more than \$4.99 (long or short) on a cash register the employee worked on. After an employee receives a final written warning, the employee cannot have another variance of more than \$4.99 in a rolling calendar year.

On March 22, 2009, the employer gave the claimant her final written warning for violating the cash handling policy when she had a variance of more than \$20.00. The employer warned the claimant that another variance could result in her discharge.

After March 22, the employer talked to the claimant at various times when she had variances in a week of more than \$10.00. During these weeks she did not have a variance of more than \$4.99 a day, though.

On September 4, the employer gave the claimant a written warning when she had a \$10.22 shortage for that week. The employer told the claimant repeated shortages would not be tolerated. On September 14, the claimant's cash register drawer was short \$8.23. Instead of reporting this shortage, the claimant asked an employee if she could borrow \$5.00. This was a violation of the employer's policy also, but the claimant knew her job was jeopardy. The claimant put the \$5.00 in her cash register so she did exceed the \$4.99 allowed variance on September 14.

On September 30, the employer learned the claimant borrowed \$5.00 from an employee so she would not be disciplined for having a variance of more than \$4.99. The employee, who gave the claimant \$5.00, was being disciplined for having a shortage and asked the employer why the claimant had not been

disciplined for her variance on September 14. When the employer talked to the claimant, she acknowledged she had borrowed \$5.00 and paid back the money to the employee. The claimant put \$5.00 in her drawer on September 14 so she would not be discharged.

The employer discharged the claimant on October 1, 2009, for violating the employer's cash policy. The claimant established a claim for benefits during the week of October 4, 2009. She has filed for and received benefits since October 4, 2009.

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. 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 claimant knew her job was in jeopardy on March 22 and September 4 when she received written warnings about the variance in her register. The claimant also knew the employer's policy did not allow employees to put in money to cover up a shortage. The fact the claimant, a lead person, borrowed money from an employee she supervised to cover up her shortage on September 14 so she would not be discharged amounts to an intentional and substantial disregard of the employer's rules and the employer's interests. The fact the claimant tried to cover up the shortage constitutes work-connected misconduct. If the claimant had not covered up the shortage, the outcome of this decision may have been different. Based on the facts presented during the hearing, the claimant is not qualified to receive benefits as of October 4, 2009.

An issue of overpayment will be remanded to the Claims Section.

DECISION:

The representative's October 26, 2009 decision (reference 01) is reversed. The claimant committed work-connected misconduct on September 14 when she attempted to cover up her shortage. The claimant is disqualified from receiving unemployment insurance benefits as of October 4, 2009. 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 issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw