

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTI J STROWDER**  
Claimant

**APPEAL NO. 11A-UI-12258-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"DOLGENCORP LLC**  
Employer

**OC: 08/14/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated September 9, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 13, 2011. Claimant participated personally. The employer participated by Mr. Mike Williams, District Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kristi Strowder was employed by Dollar General Stores from May 4, 2009 until August 18, 2011 when she was discharged from employment. Ms. Strowder last held the position of full-time store manager and was paid by salary. Her immediate supervisor was the district manager, Mike Williams.

Ms. Strowder was discharged after an employer investigation determined that she had failed to follow numerous bank deposit handling procedures resulting in a substantial loss to the company.

Company policy requires that store managers make daily bank deposits no later than 1:00 p.m. the following work day. If excessive funds are received at the facility that require additional bank deposits, managers are to make a second deposit each day following said additional procedures. Each day's bank deposit is to be separate and individual and managers are expected to correctly attribute the deposit to the correct day and to insure bank deposits received back from the banking facility confirm that correct deposits have been made for the correct amount and date. Employees are not authorized to make combined deposits for more

than one business day, each day's remuneration is required to be separately deposited and identified.

After a company audit had shown that a substantial amount of cash was missing, the company's district manager investigated and determined that Ms. Strowder had not followed company procedure. Although the claimant indicated that she had specifically made the deposit for July 31, 2011, it was subsequently determined that the deposit bag had not reached the bank as Ms. Strowder had indicated. The bag was subsequently located at the Dollar General facility hidden behind other objects with \$2,777.04 missing.

It is the claimant's position that she must have "mixed up" the bank deposits for July 31, 2011, that the loss to the company must have been caused by a "dishonest employee." It is the claimant's further position that because other "key holder" staff members had at times been required to assist at other stores, the claimant did not have sufficient help to insure that bank deposit policies were being followed.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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.

871 IAC 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 of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that Dollar General Stores has a set bank deposit procedure that requires managers to insure that each day's revenues are identified separately and deposited by 1:00 p.m. the following day. Employees are not allowed to mix up or combine deposits and are expected to confirm by bank deposit slips that each day's deposits have been correctly deposited in the bank. Employees are also expected to immediately inform the district manager of any inability to follow the procedure.

In this matter the evidence establishes that Ms. Strowder was aware of the employer requirements but did not follow them. The funds taken in by the company on July 31, 2011 were not deposited in the bank as the claimant had stated to the company and the claimant did not insure that the deposit had been received by verifying the amount with the return deposit slips supplied by the banking institution. Claimant did not notify the district manager of any errors, variation of procedures or that the deposit was missing. Approximately two weeks later the company itself determined that funds were missing and investigated. At that time it was discovered that the bank deposit bag had been hidden in a portion of the facility with the majority of the funds missing.

Although there was no allegation that Ms. Strowder engaged in mis-appropriation of the funds, the evidence in the record establishes the claimant did not follow reasonable and known company procedures resulting in a substantial loss to the company. The claimant's failure to follow reasonable procedures or in the alternative to immediately inform her district manager of any variations or the fact that the funds had not been received by the banking institution showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated September 9, 2011, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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