

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L LANKFORD
Claimant

APPEAL NO: 14A-UI-01982-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC/DOLLAR GENERAL
Employer

OC: 01/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amanda L. Lankford (claimant) appealed a representative's February 12, 2014 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment 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 March 6, 2014. The claimant participated in the hearing. Emily Nielsen appeared on the employer's behalf. This appeal was consolidated for hearing with one related appeal, 14A-UI-01673-DT. 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:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 8, 2013. She worked part time (about 20 hours per week) as a lead sales associate in the employer's Fort Dodge, Iowa store. Her last day of work was January 20, 2014. The employer discharged her on January 24, 2014. The reason asserted for the discharge was having a second cash shortage and having over \$50.00 in shortages in a 12-month period.

The claimant had been given a written warning on October 6, 2013 for an October 5 shortage of \$19.94. The warning advised her that if she had a second shortage within the next 12 months of over \$20.00 she would be discharged. The employer also has a policy where shortages in excess of \$50.00 in a 12-month period will result in discharge. On January 20, 2014 the claimant had another shortage in the amount of \$31.55. There is no suggestion that the

claimant misappropriated the monies. Because the second shortage exceeded \$20.00 and took the claimant over \$50.00 in the 12-month period, 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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is her having the second shortage in the 12-month period and exceeding the \$50.00 limit for shortages. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. The claimant's shortage on January 20 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 12, 2014 decision (reference 02) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs