

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA L SHELTON
Claimant

APPEAL NO. 07O-UI-09512-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

OC: 07-08-07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 31, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 27, 2007 in front of Administrative Law Judge Donner. The claimant did not participate in the hearing because she did not receive the hearing notice. Judge Donner issued a decision on August 29, 2007 which was appealed to the Employment Appeal Board. The Employment Appeal Board remanded for a new hearing so that the claimant could participate. After due notice was issued, a hearing was held on October 24, 2007. The claimant did participate. The employer did participate through Mike Hutchinson, District Manager.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a store manager full time beginning June 25, 2006 through June 29, 2007 when she was suspended and then discharged on July 3, 2007.

The claimant was discharged because she failed to protect the employer's cash assets by following proper money handling procedures. On May 30, the employer discovered that a deposit that should have been made on May 15 in the amount of \$1,139.63 had not been made. Mr. Hutchinson contacted the claimant on June 1 who told him that the deposit had been made. On June 4, the claimant told Mr. Hutchinson that the deposit had been found wedged in the back of the safe and that she would make sure it was deposited in the bank on June 5. On June 21, the employer again learned that the deposit for May 15, that the claimant was to have made on June 5, still had not been made. Mr. Hutchinson called the claimant on June 21. The claimant told Mr. Hutchinson on June 21 that she had taken the deposit to the bank on June 5 and that she had a voided deposit ticket in her hand that she would leave in an envelope at the

front register for him to pick up the following day. When Mr. Hutchinson arrived to pick up the voided deposit ticket it was not at the front register as the claimant indicated it would be.

On June 25, Mr. Hutchinson met with the claimant and they went to the bank to see if there was a bank error. There was no bank error. The claimant told Mr. Hutchinson that she had made a mistake when she told him that she had a voided deposit ticket for the June 5 deposit. The May 15 deposit of approximately \$1,100.00 has not been found.

The employer investigated and discovered that the claimant had not followed cash handling procedures on several occasions. The claimant was signing deposit tickets that she did not fill out. She knew she was not to do so. The claimant was indicating on the deposit log that she had actually made deposits when in fact they were not made or were made by someone else. If the claimant had followed proper cash handling procedures, she would have discovered missing money from five deposits that were made out in her handwriting. The claimant alleges that the deposits were tampered with by another employee. If the claimant had followed the procedures and had not allowed others to handle the cash, she would have prevented the theft or discovered it and would have been able to help the employer identify the thief.

During the course of the employer's investigation the other two employees who had access to the safe were also discharged. One because she admitted petty theft and another who refused to be interviewed by the employer and just stopped showing up for work. While the employer does not believe that the claimant actually stole any money, her failure to enforce proper cash handling procedures and her own failure to follow the procedures allowed theft to go undetected. The claimant knew how to follow proper procedures and chose not to.

The claimant has received unemployment benefits since filing a claim with an effective date of July 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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 claimant did not follow proper cash handling procedures and as the manager did not enforce or insure that other employees followed proper cash handling procedures. As a consequence, theft occurred from the store that could have either been stopped or detected long before it was. The claimant knew how to properly deal with the cash, but instead relied on her underlings to be honest and trustworthy. An employer puts cash handling procedures in place to avoid just such a situation as developed here. Had the claimant only followed the procedures she would not have committed any misconduct. The claimant's failure to follow the procedures constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The July 31, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$694.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css