

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SARAH M MCCORMICK
Claimant

APPEAL NO. 18A-UI-10905-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 09/30/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Dolgencorp (employer) appealed a representative's October 25, 2018, decision (reference 04) that concluded Sarah McCormick (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 20, 2018. The claimant participated personally. The employer participated by Peter Mageto, Store Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 23, 2018, as a part-time sales cashier. The store manager told her she would work eighteen to twenty hours per week and she did. The claimant received government childcare assistance. On August 20, 2018, the claimant met with the store manager and explained that she might lose her childcare assistance because the assistance program wanted her to work at least twenty-eight hours per week. The claimant was alerting the store manager in case she had a problem finding childcare for her next shift on August 22, 2018. The claimant worked her entire shift on August 20, 2018.

On August 20, 2018, the store manager told his supervisor that the claimant walked off the job before the end of her shift on August 20, 2018. At about 4:45 p.m. on August 20, 2018, the claimant notified the store manager that the assistance program was not going to be a problem and she had childcare on August 22, 2018. The store manager told the claimant he had already reassigned her August 22, 2018, shift to another employee. Later, the claimant looked at the schedule. The store manager took the claimant off all future shifts. The claimant tried to reach the store manager to discuss the issue. The store manager sent the claimant a text the following week saying he had someone to cover all her shifts.

The claimant filed for unemployment insurance benefits with an effective date of September 30, 2018. The employer provided the name and number of Sammir "Peter" Mageto as the person who would participate in the fact-finding interview on October 24, 2018. The fact-finder called Mr. Mageto but he was not available. The fact-finder was unable to leave a message. The employer did not try to communicate with the fact-finder.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's October 25, 2018, decision (reference 04) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn