

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONEISHA BOYERS
Claimant

APPEAL NO: 11A-UI-08226-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 05-01-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 14, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 14, 2011. The claimant participated in the hearing with Attorney Shane Clements. The employer elected not to participate in the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Family Dollar Stores of Iowa from May 2010 to May 7, 2011. On April 24, 2011, the claimant grabbed a bag of 88 cent chips and paid for them with cash before opening the store. The register she used was balky and often did not provide receipts. When customers wanted receipts they would be directed to a different register. The store manager came into the store when the claimant opened and saw that she was eating chips but did not make mention of it. The claimant reported for her next scheduled shift April 27, 2011, and her manager asked to speak to her in the back room. She asked the claimant for a receipt for the chips and the claimant stated she did not have one and was told she needed to speak to District Store Manager Frank Sposito before she could return to work and was suspended until further notice. The claimant asked the manager to check the surveillance video so she could see the claimant paid for the chips but she refused to do so. On May 7, 2011, the claimant was notified her employment was terminated. She had not received any previous verbal or written warnings during her tenure with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The claimant's testimony that she paid for the chips but did not receive a receipt was credible. The evidence provided by the claimant does not meet the definition of job misconduct. The employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 14, 2011, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs