IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VEDA M MCCOLLUM
Claimant

WALGREEN COMPANY
Employer

APPEAL NO: 13A-UI-06286-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/28/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Walgreen Company (employer) appealed a representative's May 16, 2013 decision (reference 01) that concluded Veda M. McCollum (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2013. The claimant participated in the hearing and presented testimony from one other witness, Ashley Alpaugh. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Shevie Connor, Shirley Phinney, and Brian Perkins. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 20, 2004. She worked full time as an executive assistant manager; since about mid-February 2013 she was at a Des Moines Iowa store managed by Connor. Her last day of work was April 26, 2013. The employer suspended her on that date and discharged her on April 30, 2013. The reason asserted for the discharge was improper cash handling and closing procedures.

The employer had begun scrutinizing the claimant more closely by about mid-April 2013. As a result of that increased scrutiny, on or about April 20 Phinney, district loss prevention manager, began a review of video surveillance regarding the claimant's actions. She discovered that there had been an occasion on April 7 where, while the store closed at 9:00 p.m. and the claimant sent the other employees home, she stayed alone in the store until about 1:00 a.m.

While the employer did not observe the claimant doing anything inappropriate, this was contrary to the employer's general policy against having anyone alone in the store, other than when the manager would open the store first thing in the morning and might be alone for a half hour to an hour. The claimant had stayed in the store because she had been given a list of chores to be accomplished by the next day by Connor and had been told they must be done. She had not been warned in the past regarding this type of issue.

The employer asserted that at some unspecified date the claimant had asked two employees to sign off on a closing form indicating that they had counted down the drawer with the claimant, when they had not, and that the employees had declined because they knew that this was contrary to proper procedure. The claimant did not dispute that she had occasionally counted down drawers without a second employee present and assisting, but she denied that she had asked an employee to sign off on the form where that employee had declined and said that it was contrary to proper procedure. The claimant understood that having a second counter was desirable procedure, but was not aware that it was mandatory procedure. There was no evidence of any written notification to the claimant that the procedure was mandatory at least within the district; rather, while the procedure might have been desirable, it was not unusual practice for a manager to count the drawers at closing alone.

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 the cash handing and closing procedures. Conduct asserted to be disqualifying misconduct must be both specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v.*

Employment Appeal Board, 489 N.W.2d 731 (Iowa 1992). The issue regarding the claimant working alone after closing was almost a month prior to her termination, and the employer could not establish any specifics as to when the claimant might have requested an employee to sign off on the drawer closing forms where that employee declined. Further, under the circumstances of this case, the claimant's remaining late in the store to complete the required list of duties and her counting of the drawers alone as she was aware other managers had done where there was no clear written notice to her to the contrary was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and 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 May 16, 2013 decision (reference 01) is affirmed. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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