

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LORNA B LIEBMANN
1049 RIPLEY CT
MUSCATINE IA 52761

DOLLAR GENERAL
C/O COMPENSATION TAX MANAGER
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LOUISVILLE KY 40232

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Appeal Number: 05A-UI-01768-CT
OC: 01/09/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dollar General filed an appeal from a representative's decision dated February 8, 2005, reference 01, which held that no disqualification would be imposed regarding Lorna Liebmann's separation from employment. After due notice was issued, a hearing was held by telephone on March 7, 2005. Ms. Liebmann participated personally and was represented by Bob De Kock, Attorney at Law. The employer participated by Scott Neblung, Store Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Liebmann was employed by Dollar General from

February 2, 2002 until January 10, 2005. She was last employed full time as an assistant manager, a position she had held since May of 2002. On January 10, 2005, she was told by her store manager that she was being required to undergo drug testing. She questioned the manager as to why and was told that the manager's superior had directed it. The store manager contacted the district manager and then advised Ms. Liebmann that the testing was being required by Iowa law. Ms. Liebmann did not believe this to be true and, therefore, declined to undergo testing unless given what she felt to be a legitimate reason for doing so.

The employee handbook distributed in 2004 contains no provisions for random drug testing. The 2003 edition does contain such provisions. The employer did not present evidence as to the mechanism used to select employees for random drug testing. As a result of Ms. Liebmann's failure to undergo drug testing as directed, she was discharged on January 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Liebmann was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Liebmann was discharged for what the employer felt was a refusal to undergo random drug testing. In order for her failure or refusal to constitute disqualifying misconduct, the testing had to be in conformance with the requirements of Iowa's drug testing laws. See Eaton v. Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999).

The employer asserted that Ms. Liebmann was randomly selected for drug testing. However, the employer has no written policy advising employees that they are subject to random testing. Although random testing was provided for in the 2003 employee handbook, it is conspicuously absent from the 2004 edition. When an employee is given a new or revised handbook, it is reasonable for the employee to believe that policies or procedures outlined in the former handbook are no longer in force or effect. The provisions of Iowa Code section 730.5(9) require that drug testing be conducted within the terms of a written policy which has been distributed to every employee subject to testing. Inasmuch as Dollar General does not have a policy concerning random testing, Ms. Liebmann cannot be disqualified from benefits for refusing to undergo random testing.

Even if the employer's policies provided for random testing, the evidence still would not establish compliance with the drug testing laws. It was incumbent upon the employer to demonstrate that Ms. Liebmann's selection was truly random. The law requires that the selection be performed by an entity separate from the employer using a computer-based random number generator. Iowa Code section 730.5(1)k. The employer was unable to provide any specific details concerning its selection process. As such, the administrative law judge cannot conclude that its random selection process satisfied the requirements of the law.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Ms. Liebmann refused to undergo drug testing that complied with all legal requirements. Where an individual's failure or refusal to perform an assigned task is in good faith or for good cause, it is not an act of misconduct. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Because the employer's drug testing did not

comply with legal requirements, Ms. Liebmann had good cause for her refusal. As such, no disqualification is imposed.

DECISION:

The representative's decision dated February 8, 2005, reference 01, is hereby affirmed. Ms. Liebmann was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc