

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY T GRISSOM
Claimant

APPEAL NO. 11A-UI-09933-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

OC: 06/26/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 20, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 22, 2011. The claimant participated personally. The employer participated by Ms. Jane Steiert, district manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mary Grissom was employed by Dollar General from July 6, 1999, until June 24, 2011, when she was discharged from employment. Ms. Grissom last held the position of full-time store manager and was paid by salary. Her immediate supervisor was Jane Steiert.

The claimant was discharged on June 24, 2011, after reports that the claimant was consuming food without first paying for it were verified. Employees had alleged that Ms. Grissom was violating the company's "grazing" rule by consuming food without first paying for it in violation of a known company rule. The employer investigated and found wrappers from partially consumed food in the claimant's work area. Subsequently, the claimant removed the wrappers so that they would not be observed. The employer then located numerous wrappers from consumed products that appeared to be hidden away in a bank deposit bag used by the claimant. When questioned by the employer, Ms. Grissom admitted that she had violated the company's food purchase policy by consuming food before paying for it. Because the company considered the claimant's violation to be a serious violation of company policy, a decision was made to terminate Ms. Grissom.

It is the claimant's position that she was singled out by the district manager and that the employer's decision to escalate the disciplinary action to discharge was unjustified.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992). The evidence in the record establishes that Ms. Grissom was aware of the company rule that prohibited employees from consuming food products before paying for them. The claimant was also aware that violation of the rule could result in disciplinary action up to and including termination from employment. The evidence establishes that Ms. Grissom violated the rule and, also, it appears that the claimant attempted to hide evidence that she had violated the rule from her employer.

Taking company product or consuming products without paying for them is a serious violation of the duty owed to an employer and is disqualifying under the provisions of the Iowa Employment Security Law. Benefits are withheld.

DECISION:

The representative's decision dated July 20, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw