

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

DIANA L THACKER
PO BOX 37261
DES MOINES IA 50315-0320

DOLGENCORP INC
C/O COMPENSATION TAX MGR
PO BOX 34150
LOUISVILLE KY 40232

Appeal Number: 06A-UI-06532-CT
OC: 05/21/06 R: 03
Claimant: Respondent (2)

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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

DolgenCorp, Inc. filed an appeal from a representative's decision dated June 13, 2006, reference 01, which held that no disqualification would be imposed regarding Diana Thacker's separation from employment. After due notice was issued, a hearing was held by telephone on August 9, 2006. The employer participated by Rick Rice, Asset Protection Supervisor. Ms. Thacker responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Thacker was employed by Dolgencorp, Inc., doing business as Dollar General Store, from October 20, 2004 until May 16, 2006. She worked from 25 to 30 hours each week as a cashier. The employer's written policy requires that employees pay for merchandise from the store before it is consumed. Ms. Thacker had received the employee handbook containing this policy.

Approximately one week prior to May 16, 2006, Ms. Thacker pocketed a bag of cough drops from the store without making payment. The cough drops had an approximate value of \$2.00. When questioned, Ms. Thacker indicated she had not made payment because her money was in her car. There were at least three other employees in the store at the time. Her car was approximately 25 feet from the store. Ms. Thacker was suspended at that time and notified of her discharge on May 16, 2006. The above incident was the sole reason for the discharge.

Ms. Thacker filed a claim for job insurance benefits effective May 21, 2006. She has received a total of \$1,103.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Thacker 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. Thacker was discharged for violating a known store policy. She removed product without first making payment. Her actions constituted theft from the employer, which is clearly contrary to the type of behavior an employer has the right to expect. Ms. Thacker did not participate in the hearing to offer any extenuating circumstances that might justify her conduct. Although the dollar amount of the theft was minimal, the fact remains that the employer had the right to expect that merchandise would not be consumed by employees without first making proper payment.

The fact that Ms. Thacker did not have money with her at the time did not excuse her conduct. She could have gone the short distance to her vehicle to get money if necessary. There were other employees in the store who could have covered her brief absence. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving that Ms. Thacker was discharged for disqualifying misconduct. Accordingly, benefits are denied.

Ms. Thacker has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 13, 2006, reference 01, is hereby reversed. Ms. Thacker was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Thacker has been overpaid \$1,103.00 in job insurance benefits.

cfc/pjs