

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

SALLY Y GOCHENOUR

Claimant

and

DOLLAR TREE STORES INC

Employer

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HEARING NUMBER: 21B-UI-15484

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Sally Gochenour, worked for Dollar Tree from October 5, 2014 through September 3, 2020 as an assistant store manager. The Claimant was responsible for closing and ensuring deposits matched the day's receipts for depositing in the bank each night. Should there ever be a shortage of \$150 or more, the Employer automatically initiates an investigation. The Employer also has a policy that provides immediate termination for theft. This policy is contained in the personnel handbook that all employees receive at the time of hire.

The Claimant received a verbal and written warning from the new manager for not following the nightly routine procedure. On August 29, 2020, the Employer received notification from the bank regarding a \$300 shortage that triggered an investigation. Video surveillance showed the Claimant taking money from the bank deposit bag and placing it in the Claimant's purse. When confronted on September 3, 2021, the Claimant denied stealing money from the Employer, and indicated she was changing out her own larger bill for smaller bills using the money she was counting to put into the bank deposit bag. The Claimant also requested to view the video, but was denied because the video was Dollar Tree property. The Claimant denied the bag was short as she had another employee verify the bank deposit amount was correct- a procedure she did every night. The Claimant had no prior warnings specifically regarding bank shortages during her six years of employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events.

The Claimant is a six-year assistant manager who had knowledge of the Employer's policy against theft. While the parties disagree as to what the warnings were about, the Employer failed to provide any documentation to support their testimony on the same; nor did the Employer produce the video to support their case of theft. The

Claimant vehemently denies the money she counted out in the presence of another employee was short on that night in question. Her explanation as to why the video allegedly showed her ‘taking money’, was not wholly unreasonable. The Claimant testified that she sometimes changed out her larger bills for smaller ones using the money she counts for deposit. Although we think this is not a good idea, we do not equate it with theft. It doesn’t make sense that an assistant manager who presumably has knowledge of being on camera every night for six years would decide to take such a large sum of money knowing the store’s policy for such a shortage would trigger an investigation. Based on her explanation, and the Employer's failure to allow her an opportunity to view the video, we find it more probable than not, the video does not show theft was committed. For this reason, we conclude the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge’s decision dated February 12, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv