

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R. SARGEANT
Claimant

APPEAL NO: 17A-UI-08250-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 07/23/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 30, 2017. The claimant participated in the hearing. Anna Murphy, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead sales associate for Dolgencorp from November 6, 2014 to July 5, 2017. He was discharged following complaints by customers regarding his customer service skills.

On June 22, 2017, a customer complained the claimant was rude to her and her child and was unwilling to help her. The claimant was stocking shelves when a customer asked him the location of an item and the claimant told her where it was rather than taking her to the item. The claimant was previously told he needed to take customers to items they ask about.

On June 29, 2017, there was a package of gummi bears behind register three. The candy had been opened by a customer and left in the store. The claimant ate a few pieces without buying the package and even though the item was going to be thrown away, employees are not allowed to eat those items without paying for them. The employer issued the claimant a written warning for that incident June 30, 2017.

On June 30, 2017, a customer asked the claimant where an item was and he told her and started walking away. He was carrying something, dropped it, and quietly said, "Damn," in response. He did not believe the customer was close enough to hear what he said but the customer told the employer the claimant was using "foul language" but would not tell the

employer what the claimant was alleged to have said. The employer issued the claimant a written warning for unacceptable customer service July 2, 2017.

On July 2, 2017, a customer asked the claimant the price of an item and the claimant stated he did not know but the person in the front of the store could tell her because he had a hand-held scanner. The claimant acknowledges he should have accompanied the customer to the front of the store and shown her where the employee with the scanner was located, but instead he continued to stock shelves. The employer issued the claimant another written warning July 2, 2017, for unacceptable customer service.

On July 4, 2017, the customer who complained about the claimant June 22, 2017, came back into the store and was upset the claimant was still working. The employer had talked to the claimant about the incident but chose not to issue him a written warning because it was going to "let (the incident) slide." When the customer complained a second time about the same incident, the employer issued the claimant a third written warning July 5, 2017, for unacceptable customer service. If an employee receives three written warning for the same behavior in six months his employment is terminated. Consequently, the employer terminated the claimant's employment July 5, 2017.

All of the claimant's warnings were issued by Assistant Store Manager Anna Murphy who started working at the claimant's store location July 1, 2017. The claimant had never received a written warning prior to Ms. Murphy starting at the store.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 N.W.2d 661, 665 (Iowa 2000).

The claimant accumulated three written warnings for unacceptable customer service within a span of five days after Ms. Murphy started working at that store. The claimant acknowledges he should have taken the customer to the item June 22 and taken the other customer to the front of the store to the employee who had the hand-held scanner July 2, 2017, but was stocking at the time and did not want to stop as the truck had just come in and he had a large amount of product to put on the shelves. Although the claimant admits he said "Damn" June 30, 2017, he was not saying it to the customer and did not believe she could hear him when he said it. The customer complained of "foul language" but would not tell the employer what the claimant said which led the employer to believe his language was much worse than it was in actuality.

Those three incidents were the basis of the claimant's termination. The customer who complained the claimant was rude June 22, 2017, was apparently unhappy the claimant's employment was not terminated after her initial complaint in June 2017, as she questioned the claimant's status July 4, 2017. The employer did talk to the claimant about the incident June 22, 2017, at the time of occurrence and had made the decision not to take further disciplinary action but changed its mind after the customer asked why the claimant was still there. The employer cannot disclose what disciplinary action it takes against an employee to a customer as personnel information is confidential. Because the employer had already taken disciplinary action against the claimant by verbally warning him about his conduct, it was unfair to terminate his employment simply because the customer, who should have no influence on the internal disciplinary action decisions made by the employer, felt the claimant should have been discharged. If the employer had not changed its mind and issued the claimant a third written warning rather than sticking with the verbal warning it originally issued, the claimant would have only two written warnings and his employment would not have been terminated July 5, 2017.

Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 4, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn