

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA SHUMAKER
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL 21A-UI-25193-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Respondent (1)**

Iowa Code § 96.5 (2) a – Discharge for Misconduct
Iowa Code § 96.3(7) – Benefit Overpayment
Iowa Admin. Code r. – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

On November 12, 2021, the employer filed an appeal from the November 4, 2021, (reference 01) unemployment insurance decision that allowed benefits based on a determination that the claimant was discharged from her employment for no disqualifying reason. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2022. Claimant, Samantha Shumaker, participated and was represented by Attorney, Steven Ort. Employer participated through hearing representative Connie Hickerson, TALX UCM, and witnesses Mark Bullock, Regional Human Resources Manager, Jonathan Lee, District Manager, and Stacie Helfrich, Merchandising Manager. Employer's Exhibits 1(a-e), 2(a-L), 3, were offered and admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment for disqualifying job related misconduct?

Was the claimant overpaid regular unemployment benefits? If so, should she be required to repay those benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in June, 2019. Claimant last worked as a full-time store manager. Claimant was separated from employment on September 23, 2021, when she was discharged for violating company policy. Specifically the employer alleges that the claimant edited associates time-cards without their permission, failed to fill-out the time-clock worksheets correctly, and failing to require associates to sign off on their time-sheet adjustments. The employer admitted 18 separate hand-written documents into the record as exhibits. None of the employer's witnesses referred to any of these documents during their direct testimony.

The employer had a policy that employees get paid for time worked including time spent dropping off the bank deposit after the store had closed and the employees shift was over. The bank drop added approximately 15 minutes to an associate's time card if they were directed by the claimant to make the deposit. The employer's system of tracking and adding this time to employee's time

cards was informal and there was no written policy outlining the expectations or requirements of this protocol. The time cards that were provided in employer's exhibits 2(a-l) illustrate a time-keeping system that relied on paper time-cards that relied on the employees to hand write their time for each day and shift worked. Again, the employer did not testify as to how any of these exhibits were helpful to their argument and only provide direct evidence that their time management system is archaic.

The claimant testified that she had instructed her evening managers to leave the bank deposit in the safe at the store and she would make the deposit when she opened in the morning. Claimant stated that oftentimes this directive was ignored and she did not add time to employees' time cards that were disobeying a directive. Further, the employer's own witness, Stacie Helfrich, admitted that she often failed to clock-in or clock-out at the appropriate times and that she often either had to add time back into her time-card or have time subtracted depending on the demands of the day. Helfrich testified that she often left sticky notes or text messages for the claimant to adjust any time edits that needed to be done and that this practice was frequent and not an issue. Employer's Exhibits 1(a-e) purport to show all of the instances where Ms. Helfrich was not properly paid for time worked. These exhibits were hand written by Ms. Helfrich and there was no other collateral documentation to support her claim. Additionally the employer failed to lay any substantive foundation that would buttress the information contained in the paperwork.

Mark Bullock, testified that after his investigation and review of the time-card issue that the employer paid out less than \$50.00 in unpaid time to various employees for time they allege to have not been paid for. Again the employer failed to lay any foundation to support this claim and Mr. Bullock's lack of recall and lack of preparedness was detrimental to the employer's argument.

The claimant was not given any written warnings or reprimands regarding the employer's concerns over the time-card edits. Further, Jonathan Lee, District Manager, testified that there was no written policy regarding this practice.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence, and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense, and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds claimant's testimony more credible than any of the employer's witnesses.

The employer failed to provide the fact-finder and the claimant with all of the proposed exhibits prior to the start of the hearing. It required thirty minutes to ensure all of the parties had the employer's proffered exhibits. Additionally, the fact-finder made several attempts to contact the employer's main witness, Mr. Bullock, and he finally dialed into the hearing approximately thirty

minutes into the hearing. The employer was not prepared and not once during the direct testimony of any of the employer's witnesses did they refer to the exhibits that had been admitted.

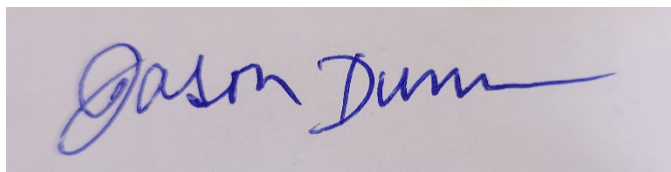
Further, the exhibits that were offered were all hand-written or copies of hand-written time cards that had zero indicia of reliability or frankly relevance to the employer's allegations of misconduct. The employer had access to computer generated payroll reports that may have supported their allegation of time-card malfeasance but the General Manager's testimony that there was no written or formal rule regarding the employer's desired protocol calls and the exhibits that the employer submitted highlight an operation that at the store level relies on hand-written and a very informal system of time-keeping and time editing. The employer's contention that the claimant's alleged behavior somehow imputes a potential federal or state tax penalty ignores the inherent weaknesses in a time-card and payroll system that is entirely hand-written and relies on the integrity of their employees to properly record their time.

The employer failed to meet its burden in proving job-disqualifying misconduct. An employer does not enhance its credibility in an unemployment hearing by submitting 18 hand-written documents that are never discussed by any of their own witnesses in addition to providing testimony from three witnesses that were either not prepared, vague, and inconsistent, Mr. Bullock or Mr. Lee, or whose testimony was conflicting, self-serving and vague, Ms. Helfrich. The employer's entire case was based on controverted hearsay testimony and exhibits that were inconsistent, vague, and lacked relevance. Benefits are allowed.

Since the representative's decision is affirmed the issue of benefit overpayment and chargeability are moot.

DECISION:

The November 4, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Jason Dunn
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February 18, 2022
Decision Dated and Mailed

jd/scn