

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HALEY GUTHRIE**  
Claimant

**APPEAL NO. 17A-UI-11885-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 10/15/17**  
**Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Haley Guthrie (claimant) appealed a representative's November 16, 2017, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Dolgencorp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 8, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 11, 2016, as a full-time lead sales associate. The employer had a handbook but the claimant did not receive a copy of it. She had access to the digital handbook and participated in computer based learning regarding sections of the handbook. There was no computer based learning module on attendance. The employer did not issue the claimant any written warnings. In the summer of 2017, the manager talked to the claimant about her attendance and how it was affecting the business. The manager did not discuss the consequences of further absences.

On October 16, 2017, the claimant sent the manager a text stating she would not be at work because her children were ill. The text was sent approximately ninety minutes prior to the start of the claimant's shift. Texting was the manager's accepted form of reporting absences. Employees could not call the manager to report absences because the telephone was not

answered. On October 16, 2017, the manager sent the claimant a return text telling the claimant she was no longer an employee.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's November 16, 2017, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs