

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN A SCHWANZ

Claimant

APPEAL NO. 23A-UI-10688-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC

Employer

OC: 10/15/23

Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

On November 14, 2023, Kathleen Schwanz (claimant) filed a timely appeal from the November 7, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on October 5, 2023 for violation of a known company rule. After due notice was issued, a hearing was held on December 19, 2023. Claimant participated. Tom Kuiper of Equifax represented the employer and presented testimony through Darret Hazlett. Exhibits 1 through 7 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Kathleen Schwanz was employed by Dollar Tree Stores, Inc. as a full-time Store Manager until October 8, 2023, when the employer discharged her from the employment. The claimant began her employment in September 2021 and became Store Manager soon thereafter. As Store Manager, the claimant was responsible for all aspects of store operations. The claimant supervised upwards of a dozen subordinates and was responsible for enforcing company policies at her store. The claimant's duties included protection of company's assets, fully and accurately recording all sales, and otherwise maintaining the integrity of the employer's accounting and inventory tracking systems. District Manager Darret Hazlett was the claimant's supervisor throughout the time the claimant served as a Store Manager.

The employer discharged the claimant from the employment for violations of company policies. On September 17, 2023, the claimant knowingly and intentionally violated the employer's policy by "post-voiding" a customer transaction after the customer paid for merchandise and left the store with the purchased merchandise. The void interfered with accurate tracking of inventory by making it look as if the merchandise had been returned to inventory when the merchandise had left the store. The claimant violated employer policy by removing the funds from the voided

transaction from the register. The “post void” interfered with the employer’s cash handling and accounting processes by making it look like cash that had been tendered in connection with the sales transaction had been refunded when it remained in the claimant’s unauthorized possession and/or control. The transaction was automatically flagged in the employer’s computer system and an alert was routed to a corporate asset protection manager.

On October 8, 2023, the corporate asset production manager interviewed the claimant via videoconference regarding the September 17, 2023 transaction. The district manager was with the claimant at the time of the interview. During the interview, the claimant indicated full knowledge of the employer’s transaction, cash handling, and inventory policies, but stated she could not provide an explanation for her actions in connection with the September 17, 2023 “post void.” The claimant provided a written statement. See Exhibit 4.

After the October 5, 2023 interview with the asset protection manager terminated, the district manager reviewed the contents of the store safe and located an envelope contained a small amount of cash. When the district manager asked the claimant about the envelope, the claimant asserted it was a fund she maintained for “balancing” register drawers when they were short at the end of the shift. In essence, the claimant asserted she kept a slush fund to avoid having to accurately account for cash register shortages. The claimant tied the September 17, 2023 “post void” to this unauthorized slush fund. With this revelation, the employer reinitiated an interview with the asset protection manager. The claimant provided a second verbal and written statement in connection with second interview. See Exhibit 5. During the interview, the claimant admitted to knowing the conduct violated the employer’s policies.

After the second interview, the employer suspended the claimant pending further review of her conduct. The employer discharged the claimant on October 8, 2023.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...
(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

...
(13) Theft of an employer or coworker's funds or property.

...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. For the purposes of this rule, "misconduct" is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 a 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. Misconduct by an individual includes but is not limited to all of the following:

...
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...
(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

...
(13) Theft of an employer's or coworker's funds or property.

...

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The September 17, 2023 unauthorized "post void" amounted to theft from the employer and violated multiple employer policies. While the claimant's supervisor affords the claimant the benefit of the doubt with regard to the claimant's true intentions in connection with the unauthorized "post void" and removal of cash from the register, the weight of the evidence indicates such benefit of the doubt is unwarranted. If the claimant's belated statement to the employer is to be believed, regarding the funds being removed from the register to maintain an unauthorized "balancing" slush fund, this would indicate not only intentional violation of multiple employer policies, but also that the claimant was intentionally dishonest during the initial October 5, 2023 interview when she asserted she did not know the basis for the September 17, 2023 "post void." The October 5, 2023 review of the contents of the store safe revealed that the claimant was still at time engaged in unauthorized cash handling practices that violated the employer's policies. The weight of the evidence indicates a course of conduct involving cash handling violations, falsifying business records, and other conduct designed to mislead the employer. The claimant's fraudulent business practices had the potential to subject the employer to legal liability. The claimant's conduct fundamentally undermined the employer's ability to trust her. The claimant's professed ignorance of certain policies addressed at the appeal hearing was not credible. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 7, 2023 (reference 01) decision is AFFIRMED. The claimant was discharged for misconduct in connection with the employment. The discharge occurred on October 8, 2023. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

December 28, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.