

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBINN D SHANAHAN SOLNER
4101 – 16TH AVE SW APT 11A
CEDAR RAPIDS IA 52404

DOLGENCORP INC
DOLLAR GENL
C/O COMP TAX MGR
PO BOX 34150
LOUISVILLE KY 40232

Appeal Number: 05A-UI-02417-JTT
OC: 01/30/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Dollar General filed a timely appeal from the March 2, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 24, 2005. Robinn Solner participated in the hearing. Dollar General participated through Scott Selberg, Regional Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robinn Solner was employed by Dollar General as a full-time Lead Clerk from October 23, 2003 until January 27, 2005, when District Manager Scott Selberg discharged her for alleged misconduct

based on failure to protect company assets in violation of company policy. There was no other basis for the discharge than this single incident.

The incident that prompted Mr. Selberg to discharge Ms. Solner occurred on January 25, 2005. On that date, Ms. Solner was working as a cashier/clerk, not as a supervisor. Both the assistant manager and the manager were on duty. Ms. Solner was scheduled to end her shift at 4:00 p.m. Her replacement came on at 4:00 p.m. Company policy and practice required Ms. Solner to clock out no more than five minutes after the scheduled end of her shift. The assistant manager was next to Ms. Solner as she ended her shift and removed her cash drawer from the register. Ms. Solner took her cash drawer to the office, placed it on the desk, locked the office, and left for the day. Ms. Solner assumed the assistant manager, being aware that Ms. Solner had just ended her shift, would immediately count the cash drawer and place it in the safe. This did not happen. The manager, the assistant manager, and Ms. Solner are the only store employees who have keys to the office. Later that day, both the store manager and the assistant manager were in the office and observed the cash drawer on the desk, fully intact, but apparently did not either count the drawer or place the drawer in the safe. At some point someone stole the contents of the cash drawer. The manager advised Ms. Solner of the theft on the following afternoon. The employer is not accusing Ms. Solner of theft.

Ms. Solner had worked under five different store managers and had been promoted to the position of Lead Clerk, an entry-level management position, eleven months prior to her discharge. Ms. Solner had been trained that when she was working as a supervisor, at the end of a clerk's shift, she was to count the drawer, prepare the drawer for the next shift, prepare a bank deposit, and place the drawer in the safe. Ms. Solner had also been trained that if she herself had been using a cash drawer, and she was still in the middle of her shift, she was to place the drawer in the safe when she was not using the drawer. Ordinarily, Ms. Solner would only cashier for short periods when other cashiers needed a break. Ms. Solner had been trained that if she had been working as a cashier, and it was the end of her shift, the manager or the assistant manager would immediately count the drawer and then secure it in the safe. This was the basis for Ms. Solner leaving her cash drawer on the desk in the locked office on January 25, 2005. Ms. Solner had worked in two other Dollar General stores that followed the same practice. The company policy regarding protection of assets does not specifically address the procedure for dealing with cash drawers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Solner was discharged for misconduct in connection with her employment. It does not.

871 IAC 24.32(1)a, (8) provide:

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).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Since the claimant was discharged, 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). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. See 871 IAC 24.32(9).

The evidence in the record fails to establish that Ms. Solner was discharged for misconduct. Ms. Solner followed established company procedure and practice on January 25, 2005. The record fails to establish any misconduct. See 871 IAC 24.32(1)(a). The record fails even to establish negligence or carelessness on the part of Ms. Solner. The evidence presented at the hearing indicates that the manager and the assistant manager, not Ms. Solner, may have been negligent or careless with Dollar General's assets. There was no "current act" of misconduct. See 871 IAC 24.32(8). Instead, the weight of the evidence in the record indicates that Ms. Solner performed her duties in accordance with her training, as well as established company procedure and practices. Accordingly, no disqualification will enter.

DECISION:

The Agency representative's decision dated March 2, 2005, reference 01, is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/kjf