

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA L HICKS

Claimant

APPEAL NO. 07A-UI-03803-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC

DOLLAR GENERAL c/o COMP TAX MGR

Employer

**OC: 03-04-07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 3, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 1, 2007. The claimant participated. The employer participated by Jeff Kelso, District Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from June 12, 2006 until on or about February 28, 2007, when she was discharged from employment. Ms. Hicks worked as a part-time cashier and was paid by the hour.

Ms. Hicks was discharged when the company's district manager believed that the claimant had not provided proper notification of impending absences for three or more consecutive days. During this time Ms. Hicks was ill and had personally telephoned assistant managers who were at the store to report her absences due to illness. Ms. Hicks was aware of the company policy which required notification and followed the policy. Ms. Hicks missed one date because she did not know that she was scheduled during the time that she had been absent due to illness. Upon recovering from her illness, the claimant called to determine what her next scheduled working day was and at that time had been told that she had been discharged by the company's district manager.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged when the company's district manager believed that she had not provided the

proper notification for three or more consecutive work days. During this time that Ms. Hicks had been ill she had personally contacted one of two assistant managers who were in charge of the facility. The claimant called in each day to report that she was unable to report for work due to illness. Ms. Hicks missed one day when she was unaware that she had been scheduled because she had been absent during the time that the schedule had been posted.

Based upon the claimant's sworn firsthand testimony, the administrative law judge must conclude that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct. The employer in this case relied solely on hearsay. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony.

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).

For the reasons stated herein, the administrative law judge finds that the claimant's conduct was not in disregard of the employer's interest or standards of behavior. Benefits are allowed.

DECISION:

The representative's decision dated April 3, 2007, reference 02, is affirmed. The claimant was discharged under nondisqualifying conditions and is eligible for benefits, providing that she meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs