

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

MARSHA J CORWIN
2907 WILSON DR
WATERLOO IA 50703

DOLGENCORP INC
D/B/A DOLLAR GENERAL
C/O COMPENSATION TAX MANAGEMENT
PO BOX 34150
LOUISVILLE KY 40232-4150

Appeal Number: 04A-UI-00436-RT
OC: 12/14/03 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Dolgencorp, Inc., doing business as Dollar General, filed a timely appeal from an unemployment insurance decision dated January 12, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Marsha J. Corwin. After due notice was issued, a telephone hearing was held on February 5, 2004, with the claimant participating. Shawn McGarvey, District Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently for two and one-half years as a full time store manager in Cedar Falls, Iowa, from February 14, 2000 until she was discharged on December 15, 2003. The claimant was discharged for allegedly mishandling or failing to protect the employer's funds or assets. The charge arises out of an incident on December 6, 2003. The employer's store in Cedar Falls, Iowa, where the claimant was a store manager was extremely busy that day. The claimant told one of the cashiers, Violet Gleason, to take her lunch break. The claimant took Ms. Gleason's cash drawer back into the break room. She did so rather than put it in the safe in the office because the store was so busy. The claimant then began operating one of the cash registers and the other cashier was operating the other register. The employer only had three employees at the store that day, including the claimant. The door to the break room is always open but the break room is inside the stock room whose door is always closed and locked. When the claimant placed the cash drawer in the break room she closed and locked the stock room door. When Ms. Gleason returned from lunch she got her drawer from the break room with the money still in the cash drawer and came up front with it. Because the store was so busy, there was no time to exchange cash drawers so the claimant informed Ms. Gleason to return the cash drawer to the back. Ms. Gleason did so and placed it back in the break room. Finally, when the business had slowed, the claimant told Ms. Gleason to go back and get her drawer and come back up and take over the register. When Ms. Gleason went to the break room to get her cash drawer all of the cash was missing, along with a roll of quarters, totaling \$656.00. Ms. Gleason had a key to the stock room, as did the claimant. The money was never found. The police were called and performed an investigation and noted that the door to the stock room could be easily opened, even if locked, by using a credit card. The claimant was not discharged for taking the money nor is the employer making such an allegation. The claimant was discharged for her procedures in handling the cash drawer. The claimant had never been accused of mishandling cash or funds before nor had she received any warnings or disciplines.

Pursuant to her claim for unemployment insurance benefits filed effective January 12, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,075.00 as follows: \$270.00 for benefit week ending December 20, 2003 (earnings \$100.00); and \$300.00 per week for six weeks from benefit week ending December 27, 2003 to benefit week ending January 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code Section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The testimony of the claimant and the employer's witness, Shawn McGarvey, District Manager, is remarkably similar. The relevant events are set out in the Findings of Fact. Ms. McGarvey testified that she believed that the employer's policy was simply to make the money safe and secure and she believed that she had done so by placing it in the break room and then closing and locking the stockroom door which was the only way to get into the break room. Ms. McGarvey further testified credibly that she placed the cash drawer in the break room because the store was extremely busy and she needed to operate a cash register using her own cash drawer. The administrative law judge notes that the cash remained in the drawer until the cashier, Violet Gleason returned from lunch and carried the cash drawer from the break room back out to the front and then returned the cash drawer to the break room. Ms. Gleason then left the cash drawer in the break room and assisted customers until the store became less busy at which time Ms. Gleason noticed that the money was missing. The claimant is not in any way accused of taking the money but merely in mishandling or failing to protect the money. The administrative law judge specifically notes that the claimant had never been accused of this before nor had she ever received any warnings or disciplines. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that claimant's act here was a deliberate act or omission

constituting a material breach of her duties and/or evinced a willful or wanton disregard of the employer's interests and/or was carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Rather, the administrative law judge concludes that the claimant's act was ordinary negligence in an isolated instance and is not disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged, but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct, to support a disqualification from unemployment insurance benefits, must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,075.00 since separating from the employer herein on or about December 15, 2003 and filing for such benefits effective December 14, 2003. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 12, 2004, reference 01, is affirmed. The claimant, Marsha J. Corwin, is entitled to receive unemployment insurance benefits provided she is otherwise eligible. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

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