

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMMY PALMER
Claimant

APPEAL NO: 06A-UI-10052-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 09/10/06 R: 02
Claimant: Respondent (5)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Family Dollar Stores of Iowa, Inc. (employer) appealed an unemployment insurance decision dated October 5, 2006, reference 01, which held that Sammy Palmer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2006. The claimant participated in the hearing. The employer participated through Debbie Sheets, Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 as a part-time cashier on January 21, 2006 and was promoted to a full-time assistant manager. She was off work on medical leave but her physician released her to return to work on August 20, 2006. The employer placed her on the schedule on August 28, 2006 but the claimant could not work on that date due to a medical appointment. Both parties disagree as to what happened after that but there is no dispute that the claimant never returned to work. At some point thereafter, the claimant brought in a form from Human Services that she needed the employer to complete. The employer completed the form indicating the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The preponderance of the evidence confirms the claimant was discharged. The parties disagree as to the type of separation in this case and neither party appeared more credible than the other. Consequently, the determination that the claimant was discharged was based on the Human Services form that was filled out by the employer on which the employer documented the claimant was discharged. The employer witness stated she did not know how to fill out that form but could offer no explanation as to why she would have put the claimant was discharged if she believed the claimant had voluntarily quit. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

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).

The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). In the case herein, there is insufficient evidence to establish the

claimant was discharged for work-related misconduct as that term is defined by the unemployment insurance law. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 5, 2006, reference 01, is modified with no effect. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs