

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

MARY A BRANDT  
PO BOX 65693  
WEST DES MOINES IA 50265-0693

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

Appeal Number: 06A-UI-04349-DWT  
OC: 03/26/06 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dollar General (employer) appealed a representative's April 12, 2006 decision (reference 01) that concluded Mary A. Brandt (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2006. The claimant participated in the hearing. Bergen Bennett, the district manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on November 23, 2004. The claimant worked as a full-time store manager. Bennett supervised the claimant the last few months of her employment.

Prior to an inventory being done at the claimant's store, three truckloads of damaged merchandise were delivered to the claimant's store. Part of the damage occurred when bleach spilled on top of cat food. Most of the damaged product was stored in the back room of the claimant's store. Bennett told the claimant to get all the damaged product out of the backroom before the inventory. To get ready for inventory, outdated product was taken off the shelves. In the claimant's opinion, all outdated food had to be marked down to zero. If a product was damaged but the claimant thought it was resalable, the claimant could mark it down and sell it to the public.

The claimant and her assistant manager marked down outdated and damaged merchandise. The claimant understood that outdated food merchandise had to be marked down to zero. As the store manager, the claimant had the discretion to decide what price damaged product should be marked to. On March 17, 2006, the claimant went to the store around 1:30 a.m. to finish up getting ready for inventory. While the claimant was alone, she took out a bag of trash.

The employer noticed the claimant had taken out a bag of unknown contents and began to investigate. During its investigation, the employer discovered the marked down merchandise in the trash and that it had been marked to zero. The employer concluded that of the over \$700.00 in merchandise that had been marked down to zero the merchandise could have been sold to the public for around \$350.00.

The employer began investigating on March 17, but did not say anything to the claimant until March 22, 2006. The employer discharged the claimant on March 24, 2006. The employer discharged the claimant because the claimant failed to protect the employer's assets by abusing the markdown policy. Instead of reselling damaged product, the claimant marked it down to zero.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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). 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had business reasons for discharging the claimant. The claimant marked down out-of-date and damaged merchandise as she believed she should. Before the claimant marked down the damaged merchandise, her supervisor told her to get the damaged product out of the backroom because they should not be counted in the inventory. Any merchandise the claimant marked to zero was either outdated or had been damaged to the extent the product could not be sold at a reduced price in the claimant's opinion. The claimant did not intentionally fail to protect the employer's assets and she did not intentionally abuse the employer's markdown policy. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. As of March 26, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's April 12, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf