

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L FRIIS
Claimant

APPEAL NO. 09A-UI-19301-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

“DOLGENCORP LLC
“DOLLAR GENERAL
Employer

OC: 11/15/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 14, 2009, reference 01, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on February 3, 2010. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tammy Friis was employed as a full-time clerk by Dollar General from June 9, 2008 until November 17, 2009 when she was discharged for a cash handling transaction error. Under company policy if an employee has received a fifth “offense” they are discharged from employment. Claimant did not intentionally make an error in her high volume cash register duties. Claimant denies being warned on four occasions prior to her discharge.

REASONING AND CONCLUSIONS OF LAW:

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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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 upon such past acts. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The facts in this case show the claimant was discharged for making a cash register error. The evidence does not establish the claimant intentionally acted in a manner below her capabilities or intentionally caused a cash shortage or overage. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 14, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs