

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE M CARLIN
Claimant

APPEAL NO. 07A-UI-01400-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

OC: 01-07-07 R: 04
Claimant: Respondent (2)

Iowa Code section 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 26, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 26, 2007. The claimant did participate. The employer did participate through Jane Steiert, District Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a Store Manager full time beginning February 13, 1997 through January 5, 2007 when she was discharged.

The claimant was discharged when the employer discovered that she had taken merchandise out of store without first paying for it. When the claimant was questioned on January 3, she admitted that on one occasion she had taken dog food and milk. The claimant later paid for the groceries. The claimant admitted at hearing that she knew it was against the employer's policies to take things without paying for them, even if she intended to make payment later.

The employer learned of the claimant's actions on December 8, 2006. At that time the employer also discovered that the claimant was not properly enforcing the overages/shortages policy on the cash drawer for two employees in particular. When one of the two employees, either Amanda or Gloria's drawer was long, the claimant would set that money aside to use when one of their drawers was subsequently short. The claimant admitted that she was not enforcing the policy correctly because she did not want to have to let either Amanda or Gloria go because she had trouble replacing employees. The claimant never sought permission from her Supervisor so that she could avoid enforcing the overages/shortages policy. The claimant had been given

a copy of the employer's handbook which prohibits borrowing money, and defines as a violation a failure to properly ring all sales through the register.

The claimant has received unemployment benefits since filing a claim with an effective date of January 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant knew or should have known that taking products without paying for them was conduct not in the employer's best interest. The claimant was not allowed to take things even if she later paid for them. Similarly, the claimant's failure to enforce the employer's policies about overages and shortages against two employees constitutes disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 26, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,034.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs