

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELISA M LIRA**  
Claimant

**APPEAL NO. 17A-UI-09317-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 08/06/17**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Dolgencorp (employer) appealed a representative's August 30, 2017, decision (reference 02) that concluded Elisa Lira (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 28, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Dana Hoereth, Store Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 on December 8, 2016, but did not start work as a part-time lead until January 5, 2017. The claimant signed for receipt of the employer's handbook on December 8, 2017. The handbook included cash handling procedures.

On May 27, 2017, the employer issued the claimant a written warning for leaving the employer's safe open a third time. On June 12, 2017, the employer issued the claimant a written warning for failing to perform closing duties. On the same day it issued her another written warning for leaving the employer's safe open a fourth time. On July 13, 2017, the employer issued the claimant a written warning for not following job duties listed in the daily planner and having her boyfriend with her at work. The employer told the claimant that "no family friends are allowed to hang out and chat in the store". The employer notified the claimant each time that further infractions could result in termination from employment.

On August 3, 2017, the claimant's boyfriend stayed with her in the store throughout her shift. The claimant entered numbers to open the employer's safe while her boyfriend knelt behind her and held open the door of the safe. The claimant removed money from the registers and took it

into an office marked Employees Only. The boyfriend followed her into the office and stayed with her while she counted the employer's money. The employer's safe count was \$169.82 short. Later the employer found \$100.00 stuck in one of the registers. The employer terminated the claimant on August 4, 2017, for having her boyfriend with her throughout the shift, letting her boyfriend in the office, and allowing her boyfriend near the safe.

The claimant filed for unemployment insurance benefits with an effective date of August 6, 2017. She received no benefits after the separation from employment. The employer participated personally at the fact finding interview on August 29, 2017, by Jeri Simmons.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant

disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding cash handling and having her boyfriend at work. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's August 30, 2017, decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs