

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN L LAMB

Claimant

APPEAL NO. 08A-UI-03598-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC

Employer

**OC: 03/16/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 4, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on April 29, 2008. The claimant participated. The employer participated by Becky Robinson, store manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from June 2006 until March 14, 2008, when she was discharged from employment. Ms. Lamb held the position of part-time assistant manager and was paid by the hour. Her immediate supervisor was Becky Robinson.

The claimant was discharged on March 14, 2008, after the employer believed that the claimant had failed to properly lock the facility's front door on the night of March 12, 2008. The claimant had closed the facility that evening and was accompanied by another worker, Heather Bomer. The unlocked door was discovered by the store manager in the early morning hours of March 13, 2008. The claimant was allowed to work throughout that workday and the unlocked door was not mentioned to the claimant. When confronted the following day, on March 14, 2008, Ms. Lamb denied leaving the door unlocked. A decision was made to terminate the claimant based upon the final incident and the employer's perception that the claimant was losing interest in her job.

Some months before her discharge, the claimant had made a statement about drawing unemployment and the claimant had failed to wear work uniforms when first promoted to the position of assistant manager in May 2007, because proper-sized uniforms were not available.

Prior to discharging the claimant, the employer did not interview the coworker who was present. An additional assistant manager who possessed a key to the facility was not questioned, as she was not assigned to work the date preceding.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant. It has not.

The evidence in this case establishes that Ms. Lamb specifically remembers locking the facility door on the night in question and that the claimant was accompanied by a coworker, Heather Bomer. Although the claimant denied leaving the door unlocked, the employer did not investigate further by questioning the coworker who was present. The evidence also establishes that another assistant manager also possessed a key to the facility but was not questioned by the employer. The evidence in the record establishes the employer had perceived that the claimant had lost interest in work, because some months before her discharge the claimant had made a statement about unemployment and because the claimant had not worn uniforms in May of 2007, due to improper sizing. Although the employer discovered the unlocked door in the early morning hours of March 13, 2008, the claimant was not informed of the finding throughout that workday and was allowed to work until she was discharged the following day. Based upon the totality of the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged under non-disqualifying conditions. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 4, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw