

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY WHITE
Claimant

APPEAL NO. 08A-UI-00143-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

**OC: 12-02-07 R: 02
Claimant: Respondent (2)**

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 December 28, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 22, 2008. The claimant participated in the hearing. Mike Hutchinson, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time assistant manager for Dollar General from December 19, 2006 to July 5, 2007. The claimant's last day worked was July 2, 2007. On July 3, 2007, the employer found the claimant's last deposit June 20, 2007, was short \$300.73 and began an investigation which resulted in the discovery of shortages of \$1,139.63 from May 14, 2007 and \$300.00 from May 16, 2007. The claimant was aware District Manager Mike Hutchinson was going to be at the store July 3, 2007, going through financial and other records, and failed to show up or call in to report his absences July 3, 4 or 5, 2007. Mr. Hutchinson tried to call the claimant to interview him about the missing money July 3 and July 9, 2007, and while the lead associate and store manager showed up July 3, 2007, and the lead associate admitted to theft of store product and both the lead person and manager were fired, the claimant did not return Mr. Hutchinson's calls or show up for work. The claimant testified he had 20 hours of vacation left and used it July 3, 4 and 5, 2007, but did not follow the employer's procedure of requesting vacation two weeks in advance. He sent a friend to collect his check but the employer stated the claimant would have to come in personally to get his check. The claimant then called and asked if he would be arrested or be forced to talk to the police if he came in to get his check. He did not mention that he was on vacation July 3, 4 or 5, 2007. The claimant testified other employees told him that he was under investigation and he was upset because they were saying they "heard" his employment was terminated for stealing. Consequently, he met with

police but did not return to work and the employer terminated his employment for job abandonment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies that he is responsible for any of the missing deposits, it is suspicious that he failed to call or show up for work July 3, 4 and 5, 2007, when he knew the district manager would be at the store reviewing the books. He testified that he took vacation but did not request it ahead of time, as required by the employer's policy, did not return Mr. Hutchinson's phone calls and did not mention he was on vacation when he called in to inquire about his check. Additionally, he sent a friend to retrieve his check rather than picking it up himself and asked if he was going to be arrested or have to talk to the police if he did come in to get his check. Under these circumstances, the administrative law judge concludes the claimant's conduct in failing to call or show up for work and his failure to

properly make the deposits May 14, May 16 and June 20, 2007, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 December 28, 2007, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,666.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css