

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS J ALVAREZ
Claimant

APPEAL NO. 10A-UI-06118-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP
Employer

**Original Claim: 03/14/10
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 15, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2010. The claimant participated. The employer participated by Henry Wieck, district manager. The record consists of the testimony of Nicholas Alvarez and the testimony of Henry Wieck.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as an assistant manager at a Dollar General store located in Waterloo, Iowa. The claimant was hired in June 2009 and was a full-time employee. The claimant was terminated on March 16, 2010, for violation of the employer's cash handling procedures.

The incidents that led to the claimant's termination occurred on March 13, 2010, and March 14, 2010. The claimant was responsible for closing the store and one of his duties was to count the cash. The claimant began counting the cash before the store closed, and so it might be necessary for him to interrupt the cash counting to attend to some other matter in the store. If the claimant had to leave, he would turn off the computer program he was using and would leave the cash in the office, which he locked up before leaving.

An auditor reviewed tapes of the claimant's actions those two nights and informed Mr. Wieck, the district manager, that the claimant had left cash in an unattended office. The claimant did not realize that he was not to leave the cash in a locked office but was supposed to take the cash up to the safe if he got interrupted. The employer has a zero tolerance for violation of this policy and the claimant was terminated. No money was missing on either occasion.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An error in judgment or discretion or negligence in isolated situations is not misconduct under Iowa law. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to show misconduct. The claimant knew that it was important to safeguard cash receipts, but he was unaware that he was specifically required to put all cash in the safe if he was interrupted while counting the cash. He testified that he locked the office door if he had to leave while counting the cash. No cash was missing on either of the days that were audited. Although the employer was entitled to discharge the claimant for violating its cash policies, the claimant's violations appear to have occurred out of ignorance as opposed to deliberately endangering the employer's property. No money was missing. Mr. Wieck admitted that he did not know if the claimant's manager had instructed him on this policy. Although the claimant had received other warnings, he did not receive a prior warning for violating this procedure. Since there is insufficient evidence to show misconduct, benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 15, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw