

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**VICKI L HALEY
1653 CHESTNUT
CORNING IA 50841**

**DOLGENCORP INC
DOLLAR GENERAL
C/O COMP TAX MGR
PO BOX 34150
LOUISVILLE KY 40232**

**Appeal Number: 04A-UI-12532-H2T
OC: 10-31-04 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 17, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 15, 2004. The claimant did participate. The employer did participate through Debbie McCurdy, Store Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a clerk full time beginning September 13, 2002 through November 1, 2004 when she was discharged. On October 30, 2004 the claimant was scheduled to work from 9:00 a.m. until 3:00 p.m. She got into a disagreement with Penny Young, the Assistant

Manager, and told Debbie McCurdy that she was tired of Penny being rude to her. Ms. Young was rude to the claimant in front of customers. The claimant told her Store Manager Ms. McCurdy that she was leaving early because she was tired of the way that Ms. Young was treating her. The claimant left at 11:15 a.m. that day rather than continue to endure mistreatment at the hands of Ms. Young. The claimant had previously complained about her treatment at the hands of Ms. Young and Ms. Young had been previously disciplined for her treatment of the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to

warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Ms. Young was mistreating the claimant by being rude to her in front of customers by making demeaning and derogatory comments. The claimant was not required to endure the mistreatment of Ms. Young, particularly when Ms. Young had previously been disciplined for her mistreatment of the claimant and did not change her behavior. The claimant made complaints about the treatment she had received from Ms. Young to the district manager and to the store manager but the employer took no action to correct Ms. Young's behavior or treatment of the claimant. The claimant was justified in leaving because the employer failed to provide an environment free of harassment. The claimant was not required to endure the mistreatment at the hands of Ms. Young. The claimant's leaving her shift early under these circumstances cannot be considered misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 17, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc