

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**APRIL HIGGINS**

Claimant

**APPEAL NO: 11A-UI-02030-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLLAR TREE STORES INC**

Employer

**OC: 12/05/10**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

April Higgins (employer) appealed an unemployment insurance decision dated February 16, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Dollar Tree Stores, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 18, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Keith West, District Manager. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**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 employed as a part-time assistant manager from June 16, 2010 through December 8, 2010. She had previously worked for the employer in 2009 and the beginning of 2010 but walked off the job. Employees are not allowed to ring up their own purchases and when a customer writes a check, the employee presents it to Telecheck. If Telecheck declines it, the employee should take a different form of payment.

On November 22, 2010 the employer received information from its corporate office that the claimant wrote a bad check. She rang up her own purchase on October 23, 2010 in the amount of \$67.31. The claimant presented it to Telecheck three times and it was declined three times but she went forward with the transaction. The check was returned for insufficient funds and the claimant has not paid for it.

The employer discharged her on December 8, 2010 for violation of the check acceptance procedures and the employees' purchase policy. The claimant was on a leave of absence from

the beginning of November 2010 through the beginning of December 2010 and the employer could not discharge her while she was on leave.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on December 8, 2010 for theft. She violated numerous company policies and wrote a bad check, which she never covered. The claimant would not have been able to do that if she had complied with company policies. The only other issue to be determined is whether the incident for which she was discharged was a current act.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a

current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988). Although the incident occurred on October 23, 2010, the employer did not learn about it until November 22, 2010 and she was on leave at that time so the employer had to wait until she returned. The administrative law judge concludes the termination was for a current act. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated February 16, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs