

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

JULIE BERGERUD
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DOLGENCORP INC
DOLLAR GENERAL
c/o COMP TAX MANAGER
PO BOX 34150
LOUISVILLE KY 40232

Appeal Number: 04A-UI-00190-ET
OC: 11-30-03 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 December 30, 2003, reference 01, 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 February 3, 2004. The claimant participated in the hearing with former manager Jim Bershard. Cory Boyde, Store Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Dollar General from April 5, 2001 to November 4, 2003. On November 4, 2003, a loss prevention employee and District Manager T.J. Heller interviewed the claimant and other employees. The claimant was scheduled to work 6:00 a.m. to 3:30 p.m. and the interview lasted until 4:00 p.m. She was upset about the conversation when she left the meeting and Mr. Heller asked if she was quitting. She said no, but she was late to pick her children up from school. The claimant called Manager Jim Bershard that evening and asked about her job status and he said he did not know but advised her not to return to work until she heard from the employer. Over the next two weeks the claimant called Mr. Bershard several times and he called Mr. Heller several times and Mr. Heller told him the home office would decide if the claimant could continue her employment. On approximately November 18, 2003, Mr. Heller told Mr. Bershard the claimant's employment was terminated because she walked out November 4, 2003.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant described the interview with loss prevention and Mr. Heller as “grueling” and it is understandable that she was upset about the situation when she left the meeting, which apparently prompted Mr. Heller to ask if she was quitting. Both the claimant and Mr. Bershard credibly testified that the claimant did not quit or walk out but left because she was late to pick up her children since the meeting lasted at least a half-hour after the scheduled end of her shift. While the employer’s witness testified the claimant admitted to loss prevention and Mr. Heller that she stole food and then quit during the interview, the claimant credibly denied making any admissions or that she walked out and the employer’s witness was not present during any of the events leading to the claimant’s separation. The administrative law judge concludes that the evidence does not establish the claimant voluntarily quit her job and the employer has not met its burden of proving disqualifying job misconduct. Consequently, benefits are allowed.

DECISION:

The December 30, 2003, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf