

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TYANA S HARRIS
Claimant

APPEAL NO. 23A-UI-01467-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP
Employer

**OC: 01/01/23
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

On February 13, 2023, the employer filed a timely appeal from the February 3, 2023 (reference 03) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 30, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on March 1, 2023. Tyana Harris (claimant) participated. Sammir Osoro represented the employer and presented additional testimony through Traci Ives. The administrative law judge took official notice of the fact-finding materials and of the record of benefits paid to the claimant (DBRO).

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tyana Harris was employed by Dolgencorp, L.L.C., doing business at Dollar General, as a part-time Lead Sales Associate from July 2022 until December 30, 2022, when the employer discharged her from the employment. The claimant worked at the Dollar General store located on Merle Hay Road a short distance south of Merle Hay Mall. Tracy Ives is the Store Manager and was the claimant's immediate supervisor.

At the start of the employment, the employer provided the claimant with an employee handbook. The claimant concedes she did not read the employee handbook.

At the start of the employment, the employer had the claimant complete computer-based learning modules (CBLs). The CBL training included training with regard to *phone-based* scams, but did not address *in-person* scams. The handbook and CBL addressed the policy pertaining to the sale of pre-paid debit cards. The employer's policy required that the only cash be accepted as payment for purchase of a pre-paid debit card.

The only conduct that factored in the discharge occurred during the claimant's shift on December 29, 2022. At the time, the claimant and an assistant manager, Shannon, were the only employees staffing the Dollar General store. The claimant was posted at the cash register while the assistant manager put away freight. At the time in question, several customers were in the store, including two large men. The two large men were wearing COVID-type medical masks at a time when no one else in the store was wearing a COVID-type medical masks. The two large men approached the register, ostensibly to purchase pre-paid debit cards, but with the actual purpose of perpetrating a scam theft involving prepaid debit cards. The two men presented the claimant with a CHASE "cash card" to purchase pre-paid debit cards. They asserted the "cash card" was the same as cash. When the register declined the CHASE card, the two men showed the claimant a section on the back of the card that said "push cash." The two men then insisted in an assertive, intimidating tone that the "push cash" information on the back of the card was a directive to the cashier to push the "cash" button on the register. The two men directed the claimant to push the cash button on the register. The claimant thought something was not right. The claimant was nervous, scared, and intimidated. The claimant unsuccessfully attempted to get the attention of the assistant manager to ask for assistance. However, the assistant manager was wearing headphones and was not paying attention. The claimant advises that she was scared for her safety and the safety of the other customers in the store. In the heat of the moment, the claimant complied with the men's directives. Pushing the cash button on the register opened the cash drawer and signaled to the point of sale (POS) system that cash was being received for the purchase, when no cash was presented. The claimant complied with directive twice for one of the men and once for the second man. In total, the claimant activated \$1,400.00 in pre-paid debit cards. As soon as the two men exited the store, the claimant went to the assistant manager and told her what had just occurred. The assistant manager reported the incident to the store manager, who reviewed the surveillance record. When the claimant reported for her next shift, the employer discharged her from the employment for violating the policy that required cash payment for prepaid debit cards.

The employer advises that if there had been but one transaction, rather than three, the employer likely would not have discharged the claimant from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

Iowa Admin. Code r. 871-24.32(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 Dept of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The claimant was the victim of a premeditated and heavy-handed con during her shift on December 29, 2022. The claimant did not knowingly or intentionally violate the employer's policy. Nor was the policy uniformly enforced. The claimant attempted to solicit assistance from the assistance manager at the time in question. The claimant could not get the assistant manager's attention because

the assistant manager had rendered herself oblivious by wearing headphones and not paying attention to the register area. The claimant made a series of errors in the heat of the moment under duress. The situation the claimant describes looks a lot like robbery. In that context, the claimant's compliance was not unreasonable. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 3, 2023 (reference 03) decision is affirmed. The claimant was discharged on December 30, 2022 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 3, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.