

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY L MAXWELL
Claimant

APPEAL NO: 09A-UI-00084-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**OC: 01/20/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kathy L. Maxwell (claimant) appealed a representative's December 24, 2008 decision (reference 07) that concluded she was not eligible to receive benefits, and the account of Family Dollar Services, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 15, 2009. The claimant participated in the hearing. Leah Douglas, the human resource area manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2008. The employer hired the claimant to work as a full-time bulk order filler. When the employer hired the claimant, the employer explained the importance of always clocking in and out on the time clock. The employer also informed the claimant that if she forgot her badge so she could not clock in and out on the time clock, this would be counted as time clock infraction. The employer's policy informed employees that if they accumulated six time clock infractions within 60 days, the employer would discharge the employee.

When the claimant first started working, she did not realize she needed to wait a bit after an employee clocked in before she could clock in. After the claimant received information she had not clocked in properly, she learned she had to wait for a green light before she could clock in properly.

The employer's record indicates the claimant did not clock in properly on October 13, 15 and 16. On October 23, the employer gave the claimant a written warning for failing to properly clock in on October 17. On October 17, the claimant either missed a punch or clocked in too early. (Employer Exhibit One.) On October 24, the employer gave the claimant a written warning for missing a punch on October 20. (Employer Exhibit Two.) On October 24, the claimant forgot her badge so she could not punch the time clock. The employer gave her a final written warning on November 4 for forgetting her badge on October 24. (Employer Exhibit Three.) The employer records indicated the claimant missed a punch on November 17, 2008. The employer gave her a one-time final written warning on November 21 for this time clock infraction. (Employer Exhibit Four.) On November 25, the employer's records indicate the claimant missed a punch. The claimant denied she missed a punch after receiving the November 21 warning because she knew her job was in jeopardy and she took extra precautions to make sure she punched in and out on the time clock. About the same time, the claimant had problems with her badge working correctly. The employer may have given her a new badge about this same time. When the claimant knew she had problems using her badge on the time clock, she reported the problem to her supervisor. She noticed the supervisor did not document the problems she reported.

On November 28, 2008, the employer discharged the claimant for violating the employer's time clock policy or for having more than six time clock infractions within 60 days.

The claimant established a claim for benefits during the week of January 20, 2008. During the week of July 6, 2008, the claimant established a claim for emergency unemployment compensation (EUC). **During the week of November 30, 2008, the claimant reopened her EUC claim.**

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Pursuant to the employer's time clock policy, the employer had justifiable business reasons for discharging the claimant. The claimant knew her job was in jeopardy when she received the one-time final written warning on November 21. She took extra precautions to check in and out properly after November 21. Since the claimant reported problems with her time card and

received a new one, it is possible the last time clock discrepancy on November 25 occurred through no fault of the claimant.

The claimant may have been negligent or careless when she clocked in or out on the time clock. The facts do not, however, establish that she intentionally disregarded the employer's interests. The evidence does not show that the claimant committed work-connected misconduct. Therefore, as of November 30, the claimant is qualified to receive EUC benefits.

DECISION:

The representatives' December 24, 2008 decision (reference 07) is reversed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of November 30, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant if or when they become one of the claimant's base period employers.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs