

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL KASTRUP
Claimant

APPEAL NO: 20A-UI-11509-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 06/07/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 3, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2020. The claimant participated in the hearing. Mike Peckis, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on September 3, 2020. The claimant recently moved and provided his new address to the fact-finder but did not receive the decision until September 17, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 13, 2020. That date fell on a Sunday so the appeal was due September 14, 2020. The appeal was not filed until September 17, 2020, which is after the date noticed on the disqualification decision. Because the claimant did not receive the decision until September 17, 2020, and filed his appeal on that date, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time store manager for Dolgencorp (Dollar General) from May 25, 2018 to June 4, 2020. He was discharged for failing to meet the employer's expectations.

The employer was dissatisfied with the store conditions in the claimant's store and his tardiness which resulted in the store opening late. The claimant's store carried 11,000 items and the store is expected to not be out of stock of more than 350 items at any given time. The claimant had over 4,800 "outs" (no date provided). The claimant stated some of his "outs" were due to COVID-19. He estimated that 25 percent of the 4,800 "outs" were because the product was

unavailable. Much of the rest of the product was in the backroom but because the store was perpetually understaffed the claimant was unable to move the product from the backroom to the front of the store. The employer did arrange for a few employees from other stores to go to the claimant's store to help with stocking on two occasions but the claimant said those employees were clear about not wanting to be there and some left at noon.

Due to COVID-19 product was "flying out the door" which contributed to the outs. Business doubled and tripled normal sales. The employer told the claimant to hire more employees but did not provide any additional money for those employees. On average, the claimant was allotted 115 hours to split between two full-time employees and one part-time employee in addition to the claimant, covering the store seven days per week from 8:00 a.m. to 8:00 p.m. or 10:00 p.m. Turnover was also high and when the claimant hired new staff he had to train them.

The employer also cited the claimant's tardiness. The claimant admits that he was occasionally tardy but most of the problems with the store opening late occurred because other staff members were late or did not show up and did not call the claimant so he was unaware the store did not open on time. When he was informed the store was not open he arrived at the store as fast as he could. On May 5, 2020, two district managers and a loss prevention manager were scheduled to visit the store at 1:00 p.m. Instead they showed up in the morning. The claimant called his district manager at 7:25 a.m. because he was ill and was trying to find a replacement to open for him. He hoped that if he could sleep a little while longer he could attend the meeting at 1:00 p.m. That was only the second time during his employment the claimant called in sick. He found coverage to open the store but that employee did not get there for one and one-half hours. On another occasion, the assistant manager the claimant hired was three and one-half hours late in opening the store without notifying the claimant. It was the claimant's day off and he was on his way to visit his family. He was nearly two hours outside of Des Moines and turned around to come back to open the store.

On May 6, 2020, the claimant received a final written warning about the out of stock product and tardiness. The warning stated if the claimant did not improve in those areas his employment would be terminated.

On June 4, 2020, the claimant experienced car problems and was 18 minutes late in opening the store. The employer terminated the claimant's employment.

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, regardless of the source of the individual's wage credits:

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.

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

The claimant managed a very busy store for nine months. Besides the fact that the claimant was a fairly new manager, the store was understaffed and had high turnover which contributed greatly to the claimant's challenges in running the store. He had a high number of outs because he did not always have enough employees to help him stock and keep product on the shelf. COVID-19 greatly increased business which contributed to the outs of some products. The claimant performed his job to the best of his ability.

While the claimant was tardy on occasion, most of those situations occurred when employees failed to show up to open the store and the claimant was tasked with covering for them. Often times employees did not call him to state they would not be in to open and as a result the store opened late. Many times those incidents were attributed to the claimant rather than the employee who failed to show up to open. Although that was understandably of great concern to the employer, the claimant could not be at the store every minute it was open.

Under these circumstances, the administrative law judge finds the claimant's actions do not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 3, 2020, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

November 20, 2020
Decision Dated and Mailed

je/scn