

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

**BILLIE L SMITH
608 E SOUTH ST
WINTERSET IA 50273**

**DOLGENCORP INC
DOLLAR GENERAL
C/O COMP TAX MGR
P O BOX 34150
LOUISVILLE KY 40232**

**Appeal Number: 04A-UI-04474-HT
OC: 03/28/04 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

STATEMENT OF THE CASE:

The employer, Dollar General, filed an appeal from a decision dated April 13, 2004, reference 01. The decision allowed benefits to the claimant, Billie Smith. After due notice was issued a hearing was held by telephone conference call on May 12, 2004. The claimant participated on her own behalf. The employer participated by District Manager Deb Calhoun.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Billie Smith was employed by Dollar General from October 4, 2001 until March 26, 2004. She was the manager of the Winterset, Iowa, store.

In early February 2004, a former employee filed a complaint with the Department of Labor about hours being removed from her time records. District Manager Deb Calhoun talked with Ms. Smith about the complaint. The claimant stated a lot of the time had been removed by the former manager, and the time she had removed was due to this employee not clocking out for lunch or other breaks. In addition, Ms. Smith stated the computer records were off a lot of the time due to the temporary workers not knowing how to clock in or out, and sometimes the computer itself would not register the correct employee status.

The corporate office investigated the Winterset store and found Ms. Smith had made 250 adjustments to the time records of all employees, from October 2003 through February 2004. Ms. Calhoun was notified to discharged the claimant which she did on March 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the claimant has acknowledged making the adjustments to the time records of employees due to various computer and user errors, and for those individuals who failed to clock out during breaks. The employer was aware of these problems and has not provided any evidence that the adjustments made by the claimant were due to any other reason than these normal errors. No evidence has been presented that Ms. Smith deliberately entered information into the computer that she knew to be false or inaccurate, or that she intended to defraud either the employer or her employees. The employer has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of April 13, 2004, reference 01, is affirmed. Billie Smith is qualified for benefits provided she is otherwise eligible.

bgh/s