

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACKIE S DAVIS**  
Claimant

**APPEAL NO. 14A-UI-12153-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 10/26/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 14, 2014, reference 01, which concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 12, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jason McKee participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as an assistant manager for the employer from October 13, 2013 to October 28, 2014. She was informed and understood that under the employer's work rules, employees could be discharged for taking merchandise without paying for it.

While the claimant was working on October 27, 2014 she unexpectedly discovered, while taking the cash drawers to the office, that she was having her period and did not have any tampons available. She was concerned about bleeding and causing a mess. She took a box of tampons off the shelf and went to the bathroom. When she exited the bathroom, she knew that she needed to get to the backroom so the cash drawers were not left unattended. She noticed a friend in the store. She put \$20 in the plastic wrap around the box. She gave the friend the box and asked if the friend to pay for the tampons and put the box in the car. He did not hear her correctly and took the box of tampons to her car without paying for them. The claimant assumed the friend had done what she had asked him to do. She continued to work until the end of her shift.

Later, the store manager, Jason McKee was reviewing surveillance video of the store and noticed the claimant take a box of tampons from the shelf and not pay for it. The claimant was confronted by a loss prevention specialist taking the tampons without paying for them. She provided the explanation set forth in the previous paragraph and agreed to repay the \$5 cost of the tampons.

On October 28, 2014 the employer discharged the claimant for taking merchandise without paying for it.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's statement seems logical and credible and consistent with what was observed on the video. No willful and substantial misconduct has been proven in this case. At most, the claimant made a good faith error in judgment in not double checking with her friend or the cashier to make sure the tampons were paid for.

**DECISION:**

The unemployment insurance decision dated November 14, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/can