

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CYNTHIA SEGOVIA**  
Claimant

**APPEAL NO: 19A-UI-00613-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 12/09/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 9, 2019, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 5, 2019. The claimant participated in the hearing. Misty Gaylon, Store 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: The claimant was employed as a part-time lead sales associate for Dolgencorp from October 2018 to December 1, 2018. She was discharged for closing the store 30 minutes early November 24, 2018.

On November 24, 2018, the claimant closed a register at the store at 10:30 p.m. which shuts down all the registers. The store was not scheduled to close until 11:00 p.m. A bank deposit was placed in an unsealed envelope in the bottom safe instead of the top safe where there is a time delay lock. The drop envelope containing \$174.00 was not counted and was left on the counter overnight. When the employer ran the end of day report for November 24, 2018, on November 26, 2018, it was still \$130.00 short. That was the claimant's only shortage over \$5.00. Under the employer's policy, any shortage over \$50.00 results in termination. The claimant called the employer November 24, 2018, to ask for guidance, but when her instructions did not work the claimant did not call back.

The claimant received a written warning December 1, 2018, for selling tobacco to a minor during a sting operation November 3, 2018.

The employer terminated the claimant's employment December 1, 2018, for the events of November 24, 2018.

## 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 made a poor judgment in shutting down one register which resulted in all being shut down and the store being closed 30 minutes early on one of the busiest nights of the year. Additionally, in the confusion, the bank deposit was placed in an unsealed envelope in the

bottom safe rather than the time delayed top safe, \$174.00 was placed in a drop envelope but was uncounted and left on the counter overnight and she was \$130.00 short.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant had a bad night she was a fairly new lead sales associate and her actions were not a willful disregard of the employer's standards but rather unintentional errors. Because the claimant's actions were not intentional misconduct, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The January 9, 2019, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn