

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J CULP
Claimant

APPEAL NO: 07A-UI-07431-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

**OC: 07/01/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dollar General (employer) appealed a representative's July 23, 2007 decision (reference 01) that concluded Kelly J. Culp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2007. The claimant participated in the hearing. Beth Smith, the manager, appeared on the employer's behalf. 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 21, 2007. The employer hired the claimant to work as a part-time sales associate.

Prior to June 21, 2007, the claimant's job was not in jeopardy. The claimant was scheduled to work 2:30 to 7:30 p.m. on June 21, 2007.

The claimant and her son's girlfriend do not get along. On June 21 around 3:30 p.m. the girlfriend came to the claimant's workplace and screamed and yelled at the claimant. The claimant had a panic attack as a result of the girlfriend's conduct. When the claimant left work around 3:45 p.m., she thought she told the manager on duty she had to go to the hospital. As the claimant left, the manager heard the claimant mumble something but assumed the claimant was only going outside to smoke a cigarette and calm down. A few minutes later when the claimant's son asked where the claimant was at, the manager on duty learned the claimant's car was no longer at work. The manager on duty contacted Smith to let her know the claimant had left work and she did not know where she was at.

The claimant drove herself directly to the emergency room. The hospital gave the claimant some medication to calm down. As soon as the claimant was released from the hospital, she went back to the store and gave the manager on duty a statement verifying she had been at the hospital. The claimant called Smith around 6:00 p.m. to let her know she had a doctor's statement verifying she had been at the emergency room. Smith informed the claimant that when she left work that day, the employer considered her to have abandoned her job. The claimant responded by informing the employer she acted the way she did because that was the way she handled her problems. The claimant did not return to work after June 21, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Even though the claimant left work early on June 21, she did not intend to quit her employment. The facts establish the employer initiated the employment separation as a result of what happened on June 21, 2007.

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).

The facts show the claimant's job was not in jeopardy prior to June 21 and she had not previously left work early. On June 21, the claimant experienced a panic attack. As a result of the panic attack, she knew she had to get to the hospital. The claimant's testimony that she told the manager on duty she was going to the hospital because of a panic attack must be given more weight than the employer's reliance on the report of the manager on duty that day who did not testify at the hearing. As a result, a preponderance of the evidence establishes the claimant informed the manager on duty she had to go to the emergency room. Even if the claimant did not tell the manager on duty she was going to the emergency room, this isolated incident does not rise to the level of work-connected misconduct. Therefore, as of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's July 23, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw