

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN SITES

Claimant

APPEAL NO: 10A-UI-13607-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC

Employer

OC: 08/15/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Family Dollar Stores of Iowa, Inc. (employer) appealed a representative's September 22, 2010 decision (reference 01) that concluded Carolyn Sites (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2010. The claimant participated in the hearing. Melissa Sams appeared on the employer's behalf and presented testimony from one other witness, Michele Hook. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 6, 2006. She worked full time as an assistant manager at the employer's Adel, Iowa store. Her last day of work was August 16, 2010. The employer discharged her on that date. The reason asserted for the discharge was inappropriate behavior.

On August 12 the claimant had spoken to a maintenance provider on an issue, and the maintenance provider had indicated it had already gotten a call "from the store manager." The store manager was Ms. Sams. The person who had previously reported the issue was another assistant manager. At work on August 13, there was a period of about an hour where the claimant had variously addressed that other assistant manager as well as other employees or customers in the store, commenting on how the store had a "new manager." Nothing vulgar or overtly offensive was said, and no one asked or told the claimant to stop, although some persons felt it was odd or awkward, and a report was made to Ms. Sams by that other assistant manager.

The employer had verbally expressed concern to the claimant in the past regarding concerns regarding rudeness. She received a written warning and decision making day on June 14,

2010, primarily because a \$500.00 on her watch was not found; because of seeking to pass responsibility onto another assistant manager, the warning also indicated the claimant needed to show more “respect for others.” As a result of the August 13 conduct after the June 14 decision-making day, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her conduct on August 13 after the June 14 decision making day. While the comments made by the claimant on August 13 were not the wisest course for the claimant, the employer has not established that her behavior that day was substantial misbehavior, as compared to a good faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer may have had a good business reason for deciding to discharge the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 22, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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