

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAILA S MOORE
Claimant

APPEAL NO. 12A-UI-12948-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 09-23-12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 29, 2012. The claimant did participate. The employer did participate through (representative) Sabrina Grell, Manager and Anthony Gunderson, Area Loss Prevention Manager.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at Family Dollar Stores of Iowa as a customer service representative part time beginning October 19, 2011 through September 24, 2012 when she was discharged. The claimant was discharged for ringing up her own purchases. On December 14, 2011 the claimant attended a training session taught by Mr. Gunderson. At that time the claimant and her coworkers were again told that under no circumstances were they to ring up their own purchases. The assistant manager reported to Ms. Grell that on September 11 the claimant rang up her own purchase. There was no emergency requiring she ring up her own purchases. The claimant had been warned on March 27, 2012 the claimant has been warned about ringing up employee purchases. The claimant knew she was not to ring up her own purchases, but did so anyway while the manager was out of the store.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew she was not to ring up her own purchases but did so anyway while the manager was out of the store. The claimant had been previously warned about her failure to follow cash handling procedures. The claimant repeated failure to follow cash handling procedures is sufficient misconduct to disqualify her from receipt of benefits.

DECISION:

The October 22, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css