August 16, 2005. On July 28, 2005, the claimant was suspended because the employer believed his breaks were too long, he had changed employees' time sheets on the computer, and he gave his key to the assistant manager so she could cover a Saturday delivery that was originally scheduled for the previous Friday. The claimant acknowledges that he sometimes took one- to two-hour lunch breaks because he lived in a different area and often worked from open to close but stated that he was a salaried employee and was still able to put in his required 48 hours per week without counting his break times. The employer testified it received complaints from employees that the claimant changed their hours on the computer so they could work overtime one week without being paid and that he would then add those hours to the following week so he did not have to pay overtime to the employees. The claimant denied ever doing that and testified the employer never told him it had received complaints that he was doing so and had not issued any warnings to the claimant about either of the those issues. The claimant was not scheduled July 23, 2005. The delivery truck was scheduled July 22, 2005, but the delivery company notified the employer it could not deliver until July 23, 2005. The claimant was off and had plans July 23, 2005, and consequently he gave his key to his assistant manager so she could be present for the delivery. The claimant had given his key to his assistant manager on other occasions, the most recent being when he went on vacation a few weeks earlier and, consequently, he did not believe he was doing anything wrong, but the employer testified it expected managers to be there for deliveries and not give their keys to anyone else "no matter what" other plans they may have made on their days off. The claimant had not received any previous warnings and was "shocked" when the employer terminated his employment.

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:
>
> 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant apparently violated the employer's seemingly inflexible policy by giving his key to his assistant so she could take a delivery that was originally scheduled to arrive Friday, not Saturday, because he was not scheduled to work Saturday and had made plans for that day. Although he violated the letter of the policy, the administrative law judge does not find his actions unreasonable under the circumstances and does not find that his actions rise to the level of disqualifying job misconduct as defined by Iowa law. With regard to the allegations regarding the claimant's breaks and changing other employees' hours in the computers, the claimant admitted that he took long breaks but still put in the required 48 hours per week and there is no evidence that he changed employees' hours in the computer. Additionally, the claimant had not received any warnings during his four years of employment with Dollar General. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The September 7, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw