

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LONDON L WILLS**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 16A-UI-07754-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/19/16**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 7, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 3, 2016. The claimant London Wills participated and testified. The employer DolGenCorp LLC participated through Manager Chrissi Kirviranta.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant manager from August 18, 2014, until this employment ended on June 4, 2016, when she was discharged.

On May 29, 2016, claimant received a call, while working at the store, from someone who claimed to be from the employer's tech support department. The store had been having issues with the computer system that day, so claimant was not surprised when the call came. The individual presented his name, identification code, and job ticket number, leading claimant to believe the call was legitimate. After leading claimant through several steps to allegedly resolve the computer issue the individual told claimant to reboot the system. The individual then instructed claimant to ring up any nearby item as a test to make sure the system was working. Claimant was next instructed to try ringing up one of the employer's prepaid cards to make sure that part of the system was working. The individual informed claimant to input several keystrokes into the system. Claimant did as she was instructed, but then noticed that the keystrokes appeared to result in the sale of a nearly \$500.00 prepaid card. Claimant then became suspicious and had another employee call the tech department while she was still on the phone with the individual. The employer's tech department informed the employee that it could not give information to anyone but the manager. Once claimant ended her phone call, she immediately contacted the district manager to report what happened. The district manager

recognized this situation as a scam and attempted to put a stop on the prepaid card, but the money had already been spent.

The employer has a policy in place that prohibits employees from selling prepaid cards over the phone and requires the customer be present in person for the sale of these cards. Violation of the policy results in immediate termination. Claimant was given extensive training on this policy on April 26, 2016. In addition to this training, a prompt comes up on the computer screen each time a prepaid card is sold reminding employees that customers must be physically present to make such purchases. According to Kirviranta the training informs employees that they should not make these sales even if the person calling reports to be from the corporate office, loss prevention, or tech support. Claimant could not recall this portion of the training. Claimant admitted she had been trained and knew she was not supposed to sell prepaid cards over the phone, but that is not what she intended to do or thought she was doing on May 29.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of very poor judgment. Here, claimant was the subject of a very well organized scam. While claimant acknowledged that she knew she was not supposed to sell prepaid cards over the phone, she also provided credible testimony that she did not believe she was doing this on May 29. This was the first time claimant had ever been involved in this type of situation and once she became suspicious she notified the appropriate individuals, though it was too late to stop the transaction from going through. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The July 7, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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