

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**CHRISTINE A DOOLIN**

Claimant

and

**SOFA MART LLC**

Employer

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**HEARING NUMBER: 15B-UI-01352**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Employment Appeal Board adopts and incorporates as its own, the administrative law judge's Findings of Fact with the following modifications:

The Claimant, Christine A. Doolin, worked for Sofa Mart, LLC from June 14, 2004 through January 13, 2015 as a full-time furniture salesperson. (28:39) At the time of her separation, her supervisor was the floor manager, Hildy Webb. (23:45; 46:32-47:18; 1:26:10-1:26:46; 1:27:06) According to company protocol, once the cash drawer reaches \$200, the manager is required to remove the excessive cash and place it in a deposit bag, which is kept locked in the manager's office drawer. (45:32-46:13; 52:10-52:44)

On December 20, 2014, as usual, several employees (Brad Brunson (48:12), Eric Deal, Austin Linderwell - the assistant manager (51:42), Hildy Webb), including Ms. Doolin, operated out of the same cash drawer. (28:13-28:46; 47:23-47:43; 48:25-48:28; 1:28:04-1:28:41) Brad received \$840 in cash from a customer for

which he placed eight \$100 bill and two \$20 bills in the cash drawer, after Eric recounted. (31:55; 48:12; 48:40-49:12; 51:13-51:35) Ms. Webb was not present for this procedure. (49:13-49:20; 51:22-51:46)

Ms. Doolin subsequently received her first cash transaction of the day (approximately 6:00 p.m.) for which she required change after receiving three \$20 bills. When she opened the cash drawer, she did not notice any \$100 bills. (1:29:45-1:29:50; 1:30:55) She called the supervisor, who was seated at her desk, to assist her because she had no change. (50:12-50:32; 52:54-54:00; 1:28:39-1:28:52; Exhibit A, unnumbered p. 2) When Hildy came over, Hildy noted for the first time that there were several \$100 bills in the drawer. (51:07-51:28; 54:00-54:12) Between the two of them, they made change for the customer (54:58; 1:30:17) and then without counting the money in the drawer, the supervisor removed the \$100 bills and placed them underneath the credit slips. (54:55-55:07) The supervisor then left the store for approximately 10-15 minutes to get change from another store. (55:09-55:12) When she returned at approximately 5:45 p.m., the supervisor still did not count, nor remove the \$100 bills from the cash register to place them in the deposit bag. (55:40-56:12; 56:32-56:45)

Hildy closed the store at 8:00 p.m. with only Eric still there, as Ms. Doolin had left at 6:15 p.m., and Brad had left at 7:00 p.m. (57:26; 56:56-57:46; Exhibit 14) When the supervisor counted out the cash drawer, she discovered it was \$100 short. (29:45-31:01; 57:57-58:27) There had never been a problem with a cash shortage in the past, except for one incident that the supervisor rectified. (1:08:37-1:08:40) Hildy contacted her superior, and contacted the Claimant about the missing \$100, who told the supervisor that she didn't see any \$100 bills. (1:33:23) The following day, as part of the Employer's investigation, Ms. Doolin submitted a statement indicating that she had only one cash transaction and was unaware of any \$100 bills in the drawer, which she reiterated on a written questionnaire on December 23, 2014.

On December 1, the Claimant had written Hildy, her supervisor, a \$25 check as payment on an outstanding \$2000 loan from the supervisor. The supervisor had provided the personal loan to the Claimant in 2013 to help her break the cycle of using payday loans. Ms. Doolin had agreed to repay \$200 per paycheck but followed through with only two payments of \$200 and two payments of \$60 before the \$25 check on December 1, 2014. The Claimant noted her payments on the memo section of her check. Ms. Doolin was unable to maintain her payment agreement with Hildy because the IRS was garnishing her paychecks. (1:41:46-1:42:04) Instead, the Claimant gave her several non-monetary items as satisfaction toward the personal loan, which included two Park Lane signature bracelets that totaled a value in excess of \$1000. (1:09:58-1:11:18; 1:11:25-1:11:31-1:15:14; 1:47:37-1:49:57; Exhibits B-D) Hildy sometimes requested 'gift' items for friends, which she retrieved from the Claimant at the latter's home without payment. (1:50:28-1:52:00; Exhibits C & D)

On January 5, three company representatives traveled to the store where the Claimant was employed to interview the Claimant and other employees. The Employer notified the Claimant at the start of the interview that any indication that the Claimant was "manipulating" the facts, being less than truthful, would be grounds for discharge from the employment. During the interview, the Claimant told the Employer that she had not seen the \$100 bills and denied taking any \$100 bill; she offered to take a lie detector test. (1:37:43- 1:38:26) Ms. Doolin also indicated that she had paid Hildy in full for the \$2000 loan, which Hildy denied. The Employer did not believe that the Claimant did not see the \$100 bills. At the conclusion of the Employer's investigation, they were unable to determine that Ms. Doolin stole the \$100 bill. (28:54-28:56) The Employer terminated Ms. Doolin *not* for taking the \$100, but for what they considered as dishonesty about other unrelated matters during the investigation. (29:09-29:19; 36:25-36:47; 1:18:50; 1:27:16-1:27:42; Exhibit 4)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events.

The Claimant was a long-term employee (10 ½ years) whom the Employer terminated because she was deemed dishonest and lacking in integrity. This conclusion was the result of an incident that triggered an investigation into the theft of \$100, which the Employer was, admittedly, unable to prove that Ms. Doolin was responsible. The record establishes that other employees, including Hildy, the supervisor, had access to

the cash drawer, and any one of them could have taken the \$100. After all, none of the persons who admittedly had knowledge of the \$100 bills followed store protocol to secure the bills from the time the bills entered into the cash drawer until the time the supervisor counted them at store's closing. Even when the supervisor first learned of the bills, the supervisor failed to follow protocol by placing them in the deposit bag, locked up in her office as early as 5:45 p.m. when she left the store for 15 minutes to obtain change. The Employer has failed to prove that the Claimant ever saw the \$100 bills in the first place.

The Employer's focus on the reason and details of the loan agreement between Ms. Doolin and her supervisor (Hildy) was misguided as that transaction was strictly personal, and not an employment matter. Thus, we found it unreliable in impugning the Claimant's overall truthfulness and integrity in terms of her employment. Both parties agreed that the Claimant had no prior warnings or issues with money shortages in the 10 years that the Claimant was employed, with the exception of one incident that occurred on her supervisor's watch, which was cured.

The Claimant's argument that she paid the personal loan in full is supported by documentation, albeit drawn up after her termination. Hildy admitted, at least, receiving the two bracelets; and although she denied receiving any other 'gifts' from Ms. Doolin, we find the Claimant's testimony credible that she did, in fact, give her gifts throughout the year to pay off her debt. While the two women may not have had a 'meeting of the minds' in terms of what constituted payments, their 'loosy-goosy' personal agreement does not make the Claimant a dishonest person. If anything, their disagreement about the full payment of the loan was a miscommunication or lack thereof. At any rate, it had no bearing on the Claimant's employment as a furniture salesperson.

Based on this record, we conclude that the Employer has failed to satisfy its burden of proving by a preponderance of the evidence that the Claimant was dishonest during the investigation, which triggered her termination.

#### **DECISION:**

The administrative law judge's decision dated March 23, 2015 is **REVERSED**. The Claimant was discharged for no disqualifying misconduct. Accordingly, the Claimant is allowed benefits provided she is otherwise eligible.

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Ashley R. Koopmans

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James M. Strohman

**DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

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Kim D. Schmett

AMG/fnv