

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY M BOYNTON
Claimant

APPEAL NO. 06A-UI-11208-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

**OC: 10/15/06 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Dollar General, filed an appeal from a decision dated October 14, 2006, reference 02. The decision allowed benefits to the claimant, Kathy Boynton. After due notice was issued, a hearing was held by telephone conference call on December 6, 2006. The claimant participated on her own behalf. The employer participated by Store Manager Debbie Goble.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kathy Boynton began employment with Dollar General on August 25, 2006. Her last day worked was October 7, 2006. She was a full-time assistant manager.

Store Manager Debbie Goble suspended the claimant indefinitely on October 7, 2006, because she had been charged with third degree theft. The criminal matter has not yet been resolved but the employer indicated the claimant would be returned to work if the charges were dropped or she was found not guilty. The criminal charges are not related in any way to her employment.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant was suspended for non-work-related criminal charges which have not yet been resolved. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982), and it has not presented any evidence of misconduct, only of a pending criminal charge. Disqualification may not be imposed.

DECISION:

The representative's decision of November 14, 2006, reference 02, is affirmed. Kathy Boynton is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw