

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRO L JARAMILLO
Claimant

APPEAL 19A-UI-04357-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

**OC: 04/28/19
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On May 28, 2019, Dollar Tree Stores, Inc. (employer) filed an appeal from the May 15, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Alejandro L. Jaramillo (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Manager Dawn Harris and was represented by Jacqueline Jones of Equifax. The Employer's Exhibits 1 through 5 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claims history.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Assistant Manager beginning on August 19, 2018, and was separated from employment on April 18, 2018, when he was discharged. The employer has an extensive coupon policy that, among other things, limits coupons to four per customer and requires a manager review to ensure it is valid and manually override if a coupon does not scan automatically. The claimant was aware of the policy and it was posted at the cash registers. He was also responsible for ensuring that other associates were trained and following the policy.

On April 12 and April 13, 2019, the claimant rang multiple coupons for customers outside of the four allotted. It came to the attention of Loss Prevention who began an investigation and discovered the coupons being accepted were for products that the employer did not carry. When asked about the situation on April 18, the claimant stated the coupons all rang through the employer's system. However, Manager Dawn Harris also scanned the coupons and discovered an error message that required manager override. The claimant was discharged for violation of the coupon policy which resulted in a loss of \$125.00 to the store.

The administrative record reflects that the claimant has not received any unemployment insurance benefits since filing a claim with an effective date of April 28, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview.

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. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has an interest in trusting its managers with its assets. The claimant violated that trust when he accepted coupons for products which the store did not stock and allowed excessive coupons to be used. The claimant willfully or deliberately engaged in conduct which was against the employer's best interest. This is disqualifying misconduct even without prior warning. Benefits are denied.

As the claimant has not yet claimed any unemployment insurance benefits, the issue of overpayment and the chargeability of the employer's account for benefits received prior to this decision are moot.

DECISION:

The May 15, 2019, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. As the claimant has not yet claimed any unemployment insurance benefits, the issue of overpayment and the chargeability of the employer's account for benefits received prior to this decision are moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn