

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROBERT D ARNOLD
PO BOX 151
505 FAIRVIEW ST
OXFORD JUNCTION IA 52323**

**FAMILY DOLLAR SERVICES INC
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-01970-CT
OC: 09/12/04 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Family Dollar Services, Inc. filed an appeal from a representative's decision dated February 15, 2005, reference 02, which held that no disqualification would be imposed regarding Robert Arnold's separation from employment. After due notice was issued, a hearing was held by telephone on April 4, 2005. Mr. Arnold participated personally. The employer participated by Taryn Barrett, Area Human Resources Manager, and Keith Diltz, Shipping/Bulk Department Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Arnold was employed by Family Dollar Services, Inc. from March 18, 2002 until January 20, 2005 as a full-time bulk order puller. His job was to pull specified product for shipment to various Family Dollar stores. He was given paperwork directing him as to what module, bay, level, and pallet the product was to be pulled from. Mr. Arnold was discharged for making too many errors in the performance of his job.

The employer has set an accuracy standard of 99.5 percent for individuals performing Mr. Arnold's job. On August 5, 2004, he received a written warning because his accuracy was at 99.32 per cent for the month of July. A total of 2,061 cases were sampled and 14 errors were found. An error represents incorrect product pulled. On September 7, 2004, Mr. Arnold received a warning because his accuracy for August was 98.97 per cent. Of the 774 cases sampled, he had 8 errors. Mr. Arnold received a final written warning on November 12, 2004 because his accuracy for the week ending September 7 was 98.72. Of the 1,091 cases sampled, he had 14 errors.

Mr. Arnold's discharge was due to the fact that he did not meet the accuracy standards for the week ending January 15, 2005. His accuracy rate was 98.78. He had 8 errors in 654 cases. The employer became aware of the performance issue on or about January 18 and Mr. Arnold was discharged on January 20. His failure to meet the employer's accuracy standards was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Arnold was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Arnold was discharged because of errors in the performance of his job. The administrative law judge does not believe he deliberately or intentionally pulled incorrect product. His conduct was the result of negligence. Negligence does not constitute disqualifying misconduct unless it is so recurrent as to manifest a deliberate and substantial disregard of the employer's standards. See 871 IAC 24.32(1). Mr. Arnold did not meet the employer's accuracy standards in July, August, and one week in September of 2004. There were no further issues until the week ending January 15, 2005. Given the volume of material handled, the administrative law judge concludes that the errors identified herein are not so recurrent as to establish an intentional disregard for the employer's standards.

For the reasons stated herein, it is concluded that misconduct has not been established. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated February 15, 2005, reference 02, is hereby affirmed. Mr. Arnold was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs