

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

MICHAEL C WELCH  
2007 RAINBOW DR  
WATERLOO IA 50701

FAMILY DOLLAR STORES OF IOWA INC  
STORE #1424  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10219-AT  
OC: 08/22/04 R: 03  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2a – Discharge  
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Family Dollar Stores filed a timely appeal from an unemployment insurance decision dated September 13, 2004, reference 01, which allowed benefits to Michael C. Welch. After due notice was issued, a telephone hearing was held on October 7, 2004 with Mr. Welch participating. District Manager David Moore and Assistant Manager Sharon Lovell participated for the employer. Employer Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael C. Welch was employed by Family Dollar Stores from October 28, 2002 until he was discharged August 24, 2004. He was hired as an assistant store manager and was a store manager at the time of discharge. On August 17, 2004, District Manager David Moore presented Mr. Welch with a final warning, known in the company as a decision making step. He was given one week to bring the store into company standards. Mr. Moore pointed out to Mr. Welch that one aisle did not meet ADA requirements because it was less than 36 inches wide. He also pointed out that there were a number of items not on the store's shelves, making it impossible for customers to purchase them. Mr. Welch was given one week to correct the action. When Mr. Welch returned on August 24, 2004, the aisle still did not meet ADA requirements and even more items had not been stocked on the shelves.

In addition to this, Mr. Welch had reported on his time sheet that he had worked 12 hours on Wednesday, August 19, 2004. In fact, he has worked 8½ to 9 hours that day. There had been a prior incident in May in which Mr. Welch reported significantly more hours than he actually worked. These incidents did not result in extra pay for Mr. Welch, a salaried employee. They did put him out of compliance with a company rule that a store manager must work a minimum of 52 hours each calendar week. District Manager Moore considered these matters in reaching the decision to discharge Mr. Welch, who has received unemployment insurance benefits since filing a claim effective August 22, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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. See Iowa Code section 96.6-2. The evidence establishes that Mr. Welch did not comply with the terms of the decision making step in that he did not widen the aisle which was out of ADA compliance and in that he did not make certain that the shelves of the store were stocked adequately. The evidence also establishes that during that week Mr. Welch falsely claimed to have worked sufficient hours to comply with the company policy. These events when viewed in the context of a prior falsification of time records and earlier expressions of concern over the condition of the store are sufficient to establish misconduct. Benefits are withheld.

Mr. Welch has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated September 13, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$728.00.

kjf/b