

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED R WILHELM
Claimant

APPEAL NO. 09A-UI-09473-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**Original Claim: 05/24/09
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Family Dollar Services, Inc. filed an appeal from a representative's decision dated June 22, 2009, reference 01, which held that no disqualification would be imposed regarding Alfred Wilhelm's separation from employment. After due notice was issued, a hearing was held by telephone on August 13, 2009. Mr. Wilhelm participated personally. The employer participated by Jennifer Foster, Human Resources Area Manager, and Leah Douglas, Human Resources Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Wilhelm was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wilhelm was employed by Family Dollar Services, Inc. from March 11, 2002 until May 19, 2009. He was last employed as a utility person on the bulk conveyor. The conveyor carries merchandise destined for delivery to various Family Dollar retail stores. Mr. Wilhelm's primary job was to clear any jams that occurred with product on the conveyor.

On May 15, 2009, Mr. Wilhelm removed a package of beef jerky from the conveyor. According to his written statement, he said he did not know why he took it but that he wanted to know what it was like. His statement further indicated that he knew it was a mistake and that he regretted it. He was not told what to write in his statement. As a result of his unauthorized removal of the jerky, valued at \$3.50, Mr. Wilhelm was discharged on May 19, 2009.

Mr. Wilhelm filed a claim for job insurance benefits effective May 24, 2009. He has received a total of \$4,081.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

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. Wilhelm was discharged for theft of property belonging to the employer. It was his contention during the hearing that he picked up the bag of beef jerky from the floor and, because the bag was open, threw it away. However, this contention is inconsistent with the written statement he provided the employer. His written statement (Exhibit Two) can only be construed as an acknowledgement that he had removed the jerky in order to taste it.

Theft is clearly contrary to the type of behavior an employer has the right to expect. The value of the property taken is irrelevant. Mr. Wilhelm knew or should have known that taking merchandise from the conveyor and converting for his own use was contrary to the employer's expectations. For the reasons cited herein, it is concluded that substantial misconduct has been established and benefits are denied.

Mr. Wilhelm has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 22, 2009, reference 01, is hereby reversed. Mr. Wilhelm was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Wilhelm will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw