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

BARRY A HAIAR
416 S 4TH ST
MAQUOKETA IA 52060

FAMILY DOLLAR SERVICES INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10059-DWT
OC: 08/22/04 R: 04
Claimant: Appellant (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, 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 are 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

STATEMENT OF THE CASE:

Barry A. Haiar (claimant) appealed a representative's September 13, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Family Dollar Services, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 8, 2004. The claimant participated in the hearing. Taryn Barrett, the area human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 11, 2004. The claimant worked as a full-time forklift operator. William Shores was the claimant's supervisor.

The claimant understood the employer expected employees to notify the employer when the employee was unable to work as scheduled. The claimant did not report to work or notify the employer that he had to unexpectedly travel out of state on August 3 and 4. The claimant did not have a phone or money to call and inform the employer that he was unable to work as scheduled these days.

The claimant was camping when his car broke down on his way back home on August 17. The claimant did not report to work or notify the employer he was unable to work on August 17 and 18. The claimant reported to work on August 19, 2004.

When the claimant reported to work on August 19, the employer gave him a written warning for his failure to call and report to work on August 3 and 4. The warning informed the claimant that if he had another absence, he could be discharged. The claimant did not have any more attendance problems after August 19. On August 25, the employer discharged the claimant because he had accumulated too many attendance points. By August 25, the employer considered the claimant's absences on August 17 and 18 and that he failed to notify the employer he would not be at work these days. Each day the claimant did not report to work or call the employer, he received two attendance points for each occurrence. The employer discharges an employee when they accumulate eight attendance points. As of August 19, 2004, the claimant had eight attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant is discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew and understood the employer required employees to notify the employer when the employee was unable to work as scheduled. The claimant may have been called out of town unexpectedly, but he failed to notify the employer that he was unable to work on August 3 or 4. Even though the claimant did not expect his car to break down, the fact he did not call the employer on August 17 or 18 is troublesome.

The employer failed to talk to the claimant right away about his August 3 and 4 absences. By the time the employer talked to the claimant on August 19, he already had a total of four no-call/no-show incidents. The warning the employer gave the claimant on August 19 only addressed the August 3 and 4 absences and the claimant had already been absent from work on August 17 and 18. Since the claimant did not have any further attendance problems after the employer warned him that his job was in jeopardy on August 19, the claimant did not commit a current act of work-connected misconduct.

DECISION:

The representative's September 13, 2004 decision (reference 02) is reversed. The employer discharged the claimant for compelling business reasons. The claimant did not commit work-connected misconduct after the employer warned him that his job was in jeopardy. As of August 22, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

dlw/kjf