

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

LOUIE P DOLL  
PO BOX 184  
BLAKESBURG IA 52536

ALBIA STOP & SHOP INC  
ALBIA STOP & SHOP  
6310 – 206<sup>TH</sup> PL  
ALBIA IA 52531

Appeal Number: 04A-UI-02242-B4T  
OC: 05/18/03 R: 03  
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, 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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 18, 2004, reference 05, that held, in effect, Louie P. Doll was discharged from his employment with Albia Stop & Shop, Inc., on January 15, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on March 17, 2004. Louie P. Doll participated. Dorothy Spurgon, President participated on behalf of the employer. Official notice was taken of the unemployment insurance decision dated February 18, 2004, reference 05, together with the pages attached thereto (4 pages in all). Employer's Exhibit One admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Louie P. Doll was employed with Albia Stop & Shop, Inc., on September 1, 2004 as a part-time cook. The claimant was initially hired part-time to work from 20-30 hours per week. Subsequent to the hiring date, the claimant worked approximately 30 hours each week on a morning shift and an afternoon shift. The claimant was scheduled to report to work at 6:00 a.m. through 2:00 p.m. for the morning shift and at 2:00 p.m. through 9:00 p.m. or thereafter on the afternoon shift. The claimant performed the job duties of a part-time cook.

During the tenure of the claimant's employment he was arrested for operating a motor vehicle under the influence and his driver's license was suspended. Following the suspension of his driver's license, the claimant held a conversation with Pam Bricker, Manager. The claimant informed Pam Bricker that he was unable to drive to work and would be required to ride to work with his girlfriend. Exhibit One admitted into evidence establishes that the claimant was tardy in reporting for work on numerous occasions. The employer did not maintain a record of instances of absenteeism and tardiness and the phone calls that were made to the Manager Pam Bricker relating to reasons for his absenteeism. The claimant was never warned that his job was in jeopardy on any occasion by Dorothy Spurgon, President or Pam Bricker, Manager, in writing or verbally. The last incident of absenteeism or tardiness occurred shortly prior to January 15, 2004. The claimant contacted Pam Bricker and informed her that he was required to see his lawyer on that date, in addition, the lawyer called Pam and informed her that the claimant would be late to work because of his appointment.

The claimant then reported for work at 4:00 p.m. and was informed by Pam Bricker that he was no longer needed and was discharged.

REASONING AND CONCLUSIONS OF LAW:

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The conduct of the claimant as evidenced by the record is far from commendable. The claimant was absent or tardy on numerous occasions from assigned work shifts. The claimant was never warned in writing that his job was in jeopardy on any occasion. In addition, the record does not fully establish that the claimant was ever warned verbally because of his absenteeism and tardiness.

The claimant had called Pam Bricker, Manager, on numerous occasions to provide information as to why he was to be tardy or late in reporting for work. The last incident apparently occurred on January 15, 2004, when the claimant contacted Pam Bricker, Manager, and informed her that he had an appointment with his lawyer regarding the operating while under the influence charge that had been made. In addition, the lawyer called Pam Bricker and informed her that the claimant would be unable to report for work on time. When the claimant did arrive at work at 4:00 p.m., he was discharged by Pam Bricker, Manager.

The employer has failed to maintain documentation relating to incidents of absenteeism and tardiness and a record of the calls made by the claimant to his manager. In addition, the claimant was never warned that his job was in jeopardy on any occasion in writing or verbally because of his absenteeism and tardiness record.

The administrative law judge concludes that excessive unexcused absenteeism and tardiness has not been established. Louie P. Doll was discharged from his employment with Albia Stop &

Shop on January 15, 2004 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2a.

DECISION:

The unemployment insurance decision dated February 18, 2004, reference 05, is affirmed. Louie P. Doll was discharged from his employment with Albia Stop & Shop, Inc., on January 15, 2004 for no disqualifiable reason and unemployment insurance benefits are allowed provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

kjf/b