

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAYLOR H COMBS
Claimant

APPEAL NO. 08A-UI-00014-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 04/01/07 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer, Family Dollar Stores, filed an appeal from a decision dated December 20, 2007, reference 07. The decision allowed benefits to the claimant, Taylor Combs. After due notice was issued, a hearing was held by telephone conference call on January 16, 2008. The claimant participated on his own behalf. The employer participated by Store Manager Paddie Labruyere.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Taylor Combs was employed by Family Dollar from July until November 8, 2007, as a full-time assistant store manager. He had been counseled by Store Manager Paddie Labruyere on September 12 and October 15, 2007, for being tardy to work three times because he was “running late.”

On November 8, 2007, he was no-call/no-show to work. He was scheduled to work at 4:00 p.m. but elected to stay home with his 17-year-old son who was “shook up” because a pipe bomb had been detonated near the apartment where they lived. Mr. Combs had gone to the police station around noon to identify a suspect and returned home around 2:00 p.m. He turned off his cell phone and did not receive the messages Ms. Labruyere left starting at 4:20 p.m., asking where he was and why he was not at work. When he did not return the calls, the manager left a message notifying him he had been fired.

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.

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 claimant had been advised his job was in jeopardy as a result of his attendance problems. He maintained he had notified District Manager Frank Sposepo he would not be in to work on November 8, 2007, but the record does not support this. Mr. Sposepo had been consulted by the store manager about the claimant's no-call/no-show to work on that date and did not tell Ms. Labruyere he had received any calls from the claimant about his absence.

The claimant was discharged for a final incident of unexcused absenteeism after being warned. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 20, 2007, reference 07, is reversed. Taylor Combs is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,536.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw