

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 T SMITH
APT 3
1913 JACKSON ST
DUBUQUE IA 5 2001

FAMILY DOLLAR SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-12391-HT
OC: 10/24/04 R: 04
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, 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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Family Dollar, filed an appeal from a decision dated November 9, 2004, reference 01. The decision allowed benefits to the claimant, Michael Smith. After due notice was issued a hearing was held by telephone conference call on December 13, 2004. The claimant participated on his own behalf. The employer participated by Area Human Resources Manager Karen Barrett. Exhibits One, Two, and Three, were admitted into the record.

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 Smith was employed by Family Dollar from August 25, 2003 until October 21, 2004. He was a full-time shipping loader working 5:00 p.m. until 5:00 a.m. At the time he was hired he received a copy of the employer's policies which included information on the attendance rules. Employees who will have an unscheduled absence must call in within one hour after the start of the shift. In addition, absences will be excused only with proper documentation, and this must be submitted within 48 hours of the return to work.

Mr. Smith received written warnings regarding his attendance on April 29, May 6 and a final warning on October 4, 2004. The last warning notified him his job was in jeopardy as a result of his absenteeism. After that final warning the claimant was absent on October 11, 12 and 13, 2004. He called in each day to report his absence. He was seen by a doctor on October 13, 2004, and given a statement excusing him only for that day, not for the prior two days. Mr. Smith maintains he submitted the excuse to his Area Supervisor Chris Brune, but the employer has no record of that document. The claimant was absent again on October 18, 2004, and the employer does have the statement covering that absence, but nothing for October 11, 12 and 13, 2004.

He was discharged on October 21, 2004, because he did not produce documentation for the absences within 48 hours as required. Mr. Smith has received unemployment benefits since filing a claim with an effective date of October 24, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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, (7) provide:

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).

(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 absenteeism. In addition, he was fully aware of the employer's policy requiring documentation to excuse absences to be submitted within 48 hours of the return to work. He acknowledged he did not have any documentation to cover the absences on October 11 and 12, 2004, and there is substantial evidence that he did not submit the statement from his doctor covering the absence on October 13, 2004. The employer acknowledges receipt of the doctor's statement for the October 18, 2004, absence and the administrative law judge finds no reason why it would not also acknowledge receipt of the doctor's statement for October 13, 2004, had the claimant provided it.

In any event, the claimant did not have proper documentation for at least two days of absenteeism, and this is in violation of the employer's policy. He had reached the limit of his allowable unexcused absences. The final absences cannot be considered to have been properly reported as he failed to provide the necessary documentation. Under the provisions of the above Administrative Code section, this is misconduct for which he is disqualified.

DECISION:

The representative's decision of November 9, 2004, reference 01, is reversed. Michael Smith 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 \$1,278.00.

bgh/tjc