

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD A RILEY**  
Claimant

**APPEAL NO. 09A-UI-06143-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILY DOLLAR STORES OF IOWA INC**  
Employer

**OC: 03/01/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Edward Riley filed a timely appeal from a representative's decision dated April 9, 2009, reference 01, which denied unemployment insurance benefits based upon his separation from Family Dollar Stores. After due notice, a telephone conference hearing was scheduled for and held on May 18, 2009. The claimant participated personally. The employer participated by Ms. Tommie Young, Store Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a clerk for Family Dollar Stores from January 7, 2008 until January 30, 2009 when he was discharged for excessive unexcused absenteeism. Mr. Riley was employed as a part-time cashier working approximately 24 hours per week and was paid by the hour. His immediate supervisor was Ms. Tommie Young.

The claimant was discharged after he failed to report for scheduled work on January 24, 27, 28 and 30, 2009 due to lack of transportation. The claimant had been warned on January 27, 2009 that he would be discharged if he failed to report for scheduled work. The claimant again called in absent on January 28 and January 30, 2009.

It is the claimant's position that he had been told he was authorized to report late on January 30 if he were willing to work until the end of the shift that night but was discharged even though he had planned to report at 1:00 p.m. that afternoon. The claimant did not dispute his discharge.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to establish misconduct in connection with the work. It is.

In this matter the evidence in the record establishes that the claimant had been repetitively absent from work during the latter part of January 2009 due to lack of transportation. Mr. Riley was aware that it was his obligation to supply transportation to and from the work place and had been warned by the company that he would be discharged if he did not report for scheduled work. The claimant was discharged when he once again did not report for scheduled work on January 30, 2009.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility" for example, transportation problems and oversleeping is considered unexcused.

The evidence in this case with respect to whether the claimant was given permission to report late on January 30, 2009 is disputed. The employer's witness testified under oath that the claimant was not given permission to report late and had been warned that continued absence would result in his termination. Although Mr. Riley maintains that he was given permission to report late, the administrative law judge gives more weight to the employer's testimony because the claimant did not act in a manner consistent with those instructions. The claimant did not dispute his discharge at the time nor attempt to bring it to the attention of the manager that the claimant believed that he had permission to report late. The administrative law judge thus finds the testimony of the employer's witness to be more credible and so rules.

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.

For the reasons stated the administrative law judge concludes the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 9, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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