

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

PAULETTE B BAILEY-BELL
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DES MOINES IA 50315

DILLARD DEPARTMENT STORES INC
c/o MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201 1110

Appeal Number: 06A-UI-00783-DWT
OC: 12/18/05 R: 02
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 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

STATEMENT OF THE CASE:

Paulette B. Bailey-Bell (claimant) appealed a representative's January 10, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Dillard Department Stores, Inc. (employer) would not be charged because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2006. The claimant participated in the hearing. Dave Markoff, the store 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 December 1, 2004. The claimant worked as a full-time sales associate. The employer's work rules inform employees they can be discharged if the employee does not accurately record time they work.

Prior to December 15, the claimant's job was not in jeopardy and she did not have an attendance problem. On December 15, 2005, the claimant thought she had punched in on the time clock when she arrived for work. The claimant did not go into the store to her cash register right away because a store meeting had started and she did not want to attend the meeting. Employees are not required to attend every store meeting. The claimant waited until the meeting was over before she went to her register. The claimant opened her register before the store opened.

At noon, the claimant discovered she was not clocked in the employer's time system. At 12:15 p.m. the claimant made a time entry and estimated that she arrived at work at 9:10 a.m. The claimant understood that either her supervisor or an assistant manager should be contacted when a time entry is made, but the claimant's supervisor did not work that day and the claimant did not see any assistant manager during lunch. The claimant was scheduled to report to work at 9:15 on December 15, 2005.

The employer noticed the time entry the claimant made and upon reviewing the security tape discovered the claimant did not enter the store until 9:21 a.m. On December 18, 2005, the employer discharged the claimant for time theft by reporting she came to work 11 minutes before the security camera indicated she entered the store.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was 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 employer established business reasons for discharging the claimant pursuant to the employer's written policy. The facts do not, however, indicate the claimant intentionally misrepresented the time she reported to work. First, the claimant did not have an attendance problem and her job was not in jeopardy prior to December 15. Therefore, there was no reason for the claimant to misreport the time she arrived at work. Next, the security tape shows the claimant going to the time clock in the morning and then waiting on the dock until the meeting was over, which supports the claimant's testimony. The employer did not know when the meeting began or ended on December 15, but the claimant was at her cash register before the store opened. Finally, after the claimant realized she was not entered into the employer's time system, she made a time adjustment. While the claimant should have talked to someone in management about her time adjustment, her failure to do so at most amounts to an error in judgment. Since the claimant estimated the time she arrived at work and this was the first time there was any potential discrepancy regarding the claimant's time reporting, the facts do not show that the claimant intentionally and substantially misreported the time she arrived at work or that she disregarded the standard of behavior the employer had a right to expect from her. Therefore, as of December 18, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 10, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of December 18, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf