

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

TERRY P KLINGMAN
651 N MATTESON ST LOT 11
MAQUOKETA IA 52060

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

Appeal Number: 04A-UI-05100-RT
OC: 04/11/04 R: 04
Claimant: Appellant (5)

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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Terry P. Klingman, filed a timely appeal from an unemployment insurance decision dated April 30, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 25, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Taryn Barrett, Area Human Resources Manager, participated in the hearing for the employer, Family Dollar Services, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time repack stocker from July 21, 2003 until he was discharged on April 12, 2004. The claimant was discharged for poor attendance. The claimant was absent on April 7, 8, 9, 2004 without providing a reason and without notifying the employer. These absences were no-call/no-shows. The employer has a policy requiring that an employee call and notify the employer of an absence or tardy within one hour after the employer's shift is to start. This is covered at orientation and the claimant signed an acknowledgement of this policy. The claimant did not comply with that policy for these three absences. In fact, the claimant never returned to work. The claimant had other absences and tardies and for these he received written warnings as follows: November 20, 2003; November 22, 2003; and February 26, 2004. The claimant was not facing an imminent discharge for prior absences nor for the current absences if he had provided a doctor's excuse and properly called in those absences.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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) 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).

(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.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The employer's witness, Taryn Barrett, Area Human Resources Manager, credibly testified that the claimant had three consecutive absences as a no-call/no-show on April 7, 8, 9, 2004 and without reason. The claimant was then discharged by mail. In fact, the claimant had additional absences thereafter inasmuch as he never returned to work. These absences followed three written warnings on November 20, 2003; November 22, 2003; and February 26, 2004. The employer has a policy covered in orientation and for which the claimant signed an acknowledgement requiring that the employee notify the employer within one hour after the employee's shift is to start if the employee is going to be absent or tardy. The claimant did not do so on three days and was discharged. The claimant also had other absences and tardies contributing to his discharge and for the warnings as noted above.

The administrative law judge concludes that the claimant's absences and tardies were not for reasonable cause or personal illness and not properly reported and were excessive unexcused absenteeism. Even the claimant seems to concede at fact-finding that he was absent those three days without notifying the employer and he could have just gone on into work and didn't know why he didn't. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated April 30, 2004, reference 01, is modified. The claimant, Terry P. Klingman, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism.

kjf/b