

**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**

**STEPHANIE D GIBEAU
2000 – 45TH ST
ROCK ISLAND IL 61201**

**FAMILY DOLLAR
PO BOX 1017
CHARLOTTE NC 28201**

**FAMILY DOLLAR
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-11225-AT
OC: 10/12/03 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 96.5-2a – Discharge
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Family Dollar filed a timely appeal from an unemployment insurance decision dated October 6, 2004, reference 02, which allowed benefits to Stephanie D. Gibeau. After due notice was issued, a telephone hearing was held on November 17, 2004.

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: Stephanie D. Gibeau was employed by Family Dollar

from April 29, 2004 until she was discharged September 8, 2004. She worked as a cashier. The employer has a policy which prohibits employees from eating or otherwise using or consuming product without paying for it in advance. On the morning of September 8, 2004 Assistant Manager Karen Torrence observed Ms. Gibeau take some Little Debbie snack cakes from the display rack and consume part of them without paying for them. She observed Ms. Gibeau putting the rest of the package under the counter. Ms. Torrence called Manager Jim McNaney to the premises, and the two of them confronted Ms. Gibeau. She denied consuming the product. Ms. Torrence then retrieved the partially eaten product from under the counter which was Ms. Gibeau's work station. Ms. Gibeau has received unemployment insurance benefits since filing an additional claim effective September 19, 2004 and opening a new benefit year effective October 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for misconduct in connection with her employment. It does.

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.

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).

Although Ms. Gibeau denied the employer's allegations under oath, the employer provided the testimony of an eye witness, Karen Torrence. The evidence convinces the administrative law judge that Ms. Torrence was in a position to accurately observe Ms. Gibeau's actions. There is no evidence in the record indicating any motivation for Ms. Torrence to make a false accusation against Ms. Gibeau. Finding the employer's evidence more credible than the claimant's denial, the administrative law judge concludes that misconduct has been established and that benefits must be withheld.

Ms. Gibeau has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 6, 2004, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,815.00.

kjf/tjc