

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY H ALEXANDER
Claimant

APPEAL NO. 13A-UI-06748-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

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OC: 05/12/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Alexander (claimant) appealed a representative's June 3, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Family Dollar Stores of Iowa (employer) for excessive unexcused absenteeism after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 10, 2013. The claimant participated personally. The employer participated by Jennifer Randolph, Store Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 2010, as a part-time cashier/stocker. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a written warning on January 24, 2012, for being two hours late for work. On July 13, 2012, the employer issued the claimant a written warning for being out of dress code. The claimant was tardy about once every other week. This was generally due to transportation issues. On April 28, 2013, the claimant was almost two hours late. The employer told the claimant that the claimant's absenteeism had to stop. On May 1, 2013, the claimant did not appear for work or notify the employer of his absence because the claimant was confused about his schedule. The employer took the claimant off the schedule at one location after May 1, 2013 but the claimant continued to work at other locations. On May 10, 2013, the employer had a meeting with the claimant. The claimant understood he would be receiving a reprimand in the future. The employer did not contact the employer's human resources department to terminate the claimant from the system because she was busy. The claimant worked at other store locations through May 16, 2013. On May 16, 2013, the human resources department told the claimant he was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on May 1, 2013. The claimant was not discharged until May 16, 2013. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's June 3, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css