

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

CHIQUITA D GIBSON-WASHPUN
1118 PRAIRIE DU CHIEN RD
IOWA CITY IA 52245

DILLARD DEPARTMENT STORES INC
ATTN MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110

Appeal Number: 05A-UI-04527-HT
OC: 04/03/05 R: 03
Claimant: Respondent (1)

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:

The employer, Dillard Department Stores, Inc. (Dillard), filed an appeal from a decision dated April 20, 2005, reference 01. The decision allowed benefits to the claimant, Chiquita Gibson-Washpun. After due notice was issued a hearing was held by telephone conference call on May 18, 2005. The claimant participated on her own behalf. The employer participated by Assistant Manager Adam Horbovetz.

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: Chiquita Gibson-Washpun was employed by Dillard from July 26, 2004 until February 21, 2005. She was a full-time sales associate.

Sales associates are allowed one hour for unpaid lunch breaks, and may take 15-minute paid breaks during their shift. Approval of the supervisor is not needed for the 15-minute breaks, the associate must only make sure their area is covered by other associates. On February 21, 2005, the claimant clocked out for lunch at 1:14 p.m. and punched back in at 2:09 p.m. She had not had time to eat her meal during that time and called another associate in her area, Rachel H., to say she would take her 15-minute break to eat her lunch. Rachel indicated she would be on duty until the claimant returned.

Store Manager Mary Hall discharged the claimant for falsification of her time card as she was "on the clock" while eating her lunch.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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).

The claimant has maintained she was on her 15-minute paid break after she returned from her unpaid lunch break. The employer has failed to provide any testimony or evidence to rebut the claimant's testimony or provide any eye witnesses to establish she took longer than 15 minutes after punching back in. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of April 20, 2005, reference 01, is affirmed. Chiquita Gibson-Washpun is qualified for benefits provided she is otherwise eligible.

bgh/sc