

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER R DRISCOLL
Claimant

APPEAL NO. 09A-UI-16581-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**Original Claim: 10/04/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Family Dollar Services, Inc. filed a timely appeal from a representative's decision dated October 26, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on December 9, 2009. The claimant participated personally. Participating as a witness for the claimant was Mr. Martin Perkins, fellow employee. The employer participated by Ms. Jennifer Foster, human resource area manager. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tyler Driscoll was employed by Family Dollar Services, Inc. from December 8, 2008, until October 7, 2009, when he was discharged from employment. Mr. Driscoll was a full-time shipping loader and was paid by the hour. His immediate supervisor was Mr. Chris Brune.

The claimant was discharged after it had been reported by a security guard that he had stepped and sat upon a company conveyor belt in violation of company policy. The employer viewed the security video tape of the area and determined that Mr. Driscoll had stepped upon the conveyor belt and had sat upon it. Company policy prohibits employees from walking or sitting on the conveyor belt system unless the system is locked out. Company employees are informed of the company's policies at the time of hire. Because the employer considered the violation of the conveyor belt rule to be a serious safety violation, Mr. Driscoll was discharged from employment.

During the incident in question, Mr. Driscoll had been temporarily assigned to work in a bulk loading area of the facility due to staffing shortages. Although generally aware of the company policies, Mr. Driscoll had not received the two days' training that is normally required before a

person is placed in a new work area. The claimant received approximately one-half day's training.

During the incident in question, Mr. Driscoll momentarily stepped across the conveyor belt and sat on the belt for approximately 34 seconds while the belt was shut down by maintenance or supervisory personnel. The claimant had witnessed numerous other individuals, including supervisory personnel, step on or over the belt in the past and therefore did not believe his actions on the night of October 7, 2009, were in violation of the company policy. Mr. Driscoll believed that the belt had been shut down, locked out, and was inoperable at the time. The claimant had not been previously warned for any safety violations.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are

two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The evidence in the case at hand establishes that Mr. Driscoll was being temporarily assigned to work in the company’s conveyor belt area and had received minimal training. Mr. Driscoll had observed trainers and supervisory personnel, as well as other employees, crossing the conveyor belt and, at times, sitting upon it. When the claimant observed that the belt had been shut down for maintenance or due to jamming, he momentarily crossed the belt and on another occasion sat on the belt for approximately 34 seconds. Based upon the circumstances, the claimant was reasonable in his belief that the belt had been shut down and locked out, at least temporarily. Mr. Driscoll thus did not believe that he was endangering himself or violating a company safety rule.

While the decision to terminate Mr. Driscoll may have been a sound decision from a management viewpoint, the evidence does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s decision dated October 26, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw