**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

**Appeal Number: 04A-UI-06473-HT**
**OC: 05/16/04 R: 04**
**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.

**ERIC N MALLICOAT**
**PO BOX 284**
**CLINTON IA 52732**

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

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Family Dollar, filed an appeal from a decision dated June 3, 2004, reference 01. The decision allowed benefits to the claimant, Eric Mallicoat. After due notice was issued a hearing was held by telephone conference call on July 8, 2004. The claimant participated on his own behalf. The employer participated by Area Human Resources Manager Taryn Barrett.

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: Eric Mallicoat was employed by Family Dollar from

July 28, 2003 until April 22, 2004. He was a full-time trailer auditor. He received a first and final warning on April 5, 2004, notifying him his job was in jeopardy as a result of his attendance.

The claimant called in absent on April 19, 2004, because of a non-work-related knee injury. The employer's policy allows employees 48 hours to provide a doctor's excuse. If one is provided, the absence does not count against the attendance points. Mr. Mallicoat had a doctor's excuse which he intended to fax in on April 22, 2004, but he was not able to reach his regular supervisor, Tony, who was on vacation. When he finally reached Art Hoffman, the acting supervisor, he was told he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he 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, (7) provide:

> 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.

The record establishes the claimant properly reported his absence on April 19, 2004, and had a doctor's excuse to cover that absence within the 48 hour period required. However, he was notified he was discharged before he could present the excuse. Under these circumstances, the administrative law judge cannot conclude the claimant was guilty of any current, final act of misconduct as required by 871 IAC 24.32(8), because his final absence was due to a properly reported and excused illness. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

DECISION:

The representative's decision of June 3, 2004, reference 01, is affirmed. Eric Mallicoat is qualified for benefits provided he is otherwise eligible.

bgh/tjc