

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

WAYNE H KAPPELMAN  
APT #13  
1266 JACKSON ST  
DUBUQUE IA 52001

FAMILY DOLLAR SERVICES INC  
C/o TALX UCM SERVICES INC  
P O BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10290-DWT  
OC 08/29/04 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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Family Dollar Services, Inc. (employer) appealed a representative's September 16, 2004 decision (reference 01) that concluded Wayne H. Kappelman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 15, 2004. The claimant participated in the hearing. Taryn Barrett, the area human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2003. He worked full time as a warehouse worker in the forklift department. The employer's attendance policy informs employees that if they accumulate eight undocumented absences, the employer can discharge the employee.

On June 14, 2004, the claimant received a corrective action indicating he had accumulated 6.5 undocumented absences. Although the employer does not have a record of any more written warnings, the claimant received a warning telling him that if he had one more undocumented absence, he would be discharged.

On August 4, the claimant went to work but had to leave work within the first two or three hours of his shift because he became ill. The claimant was not authorized to leave work early. The employer initially assessed the claimant two points on August 4 and later reduced it to one attendance point. When the claimant came back to work the next day, the employer did not say anything to him. On August 9, a supervisor told the claimant he was discharged because he had too many absences. The employer has no written documentation verifying the claimant had been discharged.

The claimant did not report to work or call the employer on August 10, 11 and 12. The employer recorded these absences as three no-call, no-show incidents.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. Even though the employer does not have written documentation verifying the employer discharged the claimant on August 9, the claimant's testimony is credible. Since the employer's testimony is based on documentation, the claimant's firsthand testimony must be given more weight than the employer's reliance on hearsay information. A preponderance of the evidence establishes the employer discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established business reasons for discharging the claimant. A claimant's failure to work as scheduled because of illness does not constitute work-connected misconduct. The evidence does not establish that the claimant committed work-connected misconduct. As of August 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 16, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s