

**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**

**RYAN DEPHILLIPS  
432 TONAWANDA DR APT #206  
DES MOINES IA 50312**

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

**Appeal Number: 05A-UI-05658-RT  
OC: 04/10/05 R: 02  
Claimant: Respondent (2)**

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Dillard Department Stores, Inc., filed a timely appeal from an unemployment insurance decision dated May 16, 2005, reference 03, allowing unemployment insurance benefits to the claimant, Ryan DePhillips. After due notice was issued, a telephone hearing was held on June 15, 2005, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 2:03 p.m. on June 15, 2005, he reached a voicemail that identified the voicemail as that of the number dialed by the administrative law judge and as called in by the claimant, and also the same number as in Iowa Workforce Development records. The administrative law judge left a message for the claimant that he was

going to proceed with the hearing and if the claimant wanted to participate in the hearing, he needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 2:06 p.m. and ended when the record was closed at 2:24 p.m., and the claimant had not called during that time. Dena Getz, Assistant Store Manager, and Kristin Coffelt, Cosmetics Area Sales Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time sales associate from July 7, 2004, until he was discharged on April 11, 2005. The claimant was discharged for violating two of the employer's work rules: number ten, providing that all employees exhibit positive behavior; and number four, providing that employees demonstrate satisfactory job performance, and in particular a confrontation the claimant had on April 8, 2005 with his supervisor, Kristin Coffelt, Cosmetic Area Sales Manager, and one of the employer's witnesses. These work rules are included in the employer's handbook, a copy of which the claimant received and for which he signed an acknowledgment, as shown at Employer's Exhibit One.

On April 8, 2005, the claimant entered into a confrontation with Ms. Coffelt, his direct supervisor, about a pay raise. The claimant demanded a pay raise. However, no promise had ever been made to the claimant about any particular pay raise at that time. The claimant told Ms. Coffelt that he would not go back downstairs to his work area and would not work for the employer unless he got a raise. He further stated to her that he would just stay at the employer's location until he was fired. Ms. Coffelt asked the claimant to go downstairs and continue to work on the project she had assigned. As he was walking out of his office, he told Ms. Coffelt that he did not want to see her face and then walked out of the office. He then said that he hoped Younkers "shows you up." He then went downstairs. The claimant was disrespectful, loud and demanding during this confrontation. Ms. Coffelt reported the claimant's behavior and he was discharged on April 11, 2005. The claimant had been negative towards Ms. Coffelt and other coworkers in the past on other occasions. Ms. Coffelt had given the claimant a couple of verbal warnings about this behavior and informed the claimant that it was unacceptable. Pursuant to his claim for unemployment insurance benefits filed effective April 10, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,840.00 as follows: \$184.00 per week for ten weeks from benefit week ending April 16, 2005, to benefit week ending June 18, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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 employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on April 11, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Kristin Coffelt, Cosmetic Area Sales Manager, credibly testified that, in a confrontation with her on April 8, 2005, the claimant demanded a pay raise, or increase, but had never been promised such a pay raise or increase. The claimant informed Ms. Coffelt, who was the claimant's supervisor, that he would not go back downstairs and would not work for the employer unless he got a raise. He further indicated that he would just stay at the employer's location until he was fired. Ms. Coffelt asked the claimant to go downstairs and work on the project she had previously assigned him. As the claimant was leaving her office, he said he did not want to see her face and then walked out of her office and said that he hoped Younkers "shows you up." He then went downstairs. The claimant had received a couple of verbal warnings from Ms. Coffelt for similar behavior and was informed that, that behavior was unacceptable. The

employer has policies prohibiting such behavior, contained in a handbook, a copy of which the claimant received and for which he signed an acknowledgment, as shown at Employer's Exhibit One. The claimant was demeaning, disrespectful, loud and demanding.

Because of the employer's policies, the prior verbal warnings, and the extent of the claimant's behavior on April 8, 2005, the administrative law judge concludes that it was clearly insubordinate and that his behaviors were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. In Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990), the Iowa Court of Appeals provided that the use of profanity or offensive language in a confrontational, disrespectful or name-calling context, may be recognized as misconduct even in the case of isolated incidents or situations in which the target of abusive name-calling is not present. Although there is no evidence that the claimant used profanity during his confrontation with Ms. Coffelt, the administrative law judge concludes that his language was offensive and was made in a confrontational, disrespectful and name-calling in context, that it was not an isolated incident and the target of the disrespectful, confrontational language was present. The administrative law judge concludes that such language was disqualifying misconduct.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,840.00 since separating from the employer herein on or about April 11, 2005, and filing for such benefits effective April 10, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 16, 2005, reference 03, is reversed. The claimant, Ryan DePhillips, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$1,840.00.

kjw/kjw