

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

DENIS G EHLERS  
PO BOX 32  
DELMAR IA 52037

FAMILY DOLLAR SERVICES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02928-CT  
OC: 02/20/05 R: 04  
Claimant: Appellant (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 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

STATEMENT OF THE CASE:

Denis Ehlers filed an appeal from a representative's decision dated March 18, 2005, reference 01, which denied benefits based on his separation from Family Dollar Services, Inc. After due notice was issued, a hearing was held by telephone on April 5, 2005. Mr. Ehlers participated personally. The employer participated by Taryn Barrett, Area Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Ehlers was employed by Family Dollar Services, Inc.

from February 11, 2002 until February 23, 2005 as a full-time maintenance technician. He was discharged for making inappropriate remarks to female coworkers.

On February 28, 2003, Mr. Ehlers was given a written warning after a coworker reported that he had said to her "I wanted to come and see your beautiful body." The employer advised him that his conduct was offensive to the coworker and that such conduct would not be tolerated in the future. On October 7, 2003, he received a final written warning because of comments he made to a female coworker on September 18 and September 19. Both comments were of a sexually explicit nature concerning masturbation. Mr. Ehlers was advised at the time that any further conduct of that nature could result in his discharge.

The final incident which caused the discharge occurred on February 9 and was reported to the employer on February 16. Mr. Ehlers was in the work area of a female coworker when he walked in front of her and asked why she was in such a big hurry. She stated that she had work to do and proceeded to a module, where Mr. Ehlers followed her. Later that night, he asked this same female if she was married. He stated that he could "bone" her and she replied that he was sick. Mr. Ehlers was suspended on February 17 and notified of his discharge on February 23, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ehlers was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Ehlers was discharged for sexual harassment of female coworkers. He was aware of the employer's policy prohibiting such conduct. He had received two written warnings that clearly put him on notice that making inappropriate, sexual comments to female coworkers could result in his discharge. In spite of the warnings, he persisted in making offensive comments. He knew or should have known that his statement to a female on February 9 to the effect that he could "bone" her might be offensive to her. Although the employer's evidence consisted solely of hearsay, the administrative law judge found it persuasive and credible.

Mr. Ehlers's conduct had the potential of subjecting the employer to legal liability if a sexual harassment claim was filed. His repeated disregard of the admonitions contained in his written warnings constituted a substantial disregard for the employer's interests and standards. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

#### DECISION:

The representative's decision dated March 18, 2005, reference 01, is hereby affirmed. Mr. Ehlers was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs