

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

DORSENIA JAMES
923 DOUGLAS ST APT 311
SIOUX CITY IA 51101

LOWE'S HOME CENTERS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08669-HT
OC: 07/04/04 R: 01
Claimant: Appellant (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, 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Dorsenia James, filed an appeal from a decision dated August 5, 2004, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 2, 2004. The claimant participated on his own behalf. The employer, Lowe's, participated by Store Manager Craig Christianson and Administrative Manager Michael Jensen.

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: Dorsenia James was employed by Lowe's from

October 27, 2003 until May 18, 2004. He was a full-time stocker. At the time of hire, the claimant was trained and tested on the use of power equipment in the store, including a motorized pallet jack. The operation of this equipment during the hours the store is open to the public requires the use of a spotter and Mr. James was aware of this.

On April 30, 2004 at 7:15 a.m., Administrative Manager Michael Jensen observed the claimant in one of the aisles operating the pallet jack without a spotter. Mr. James had been stocking prior to the store opening at 7:00 a.m. and lost track of time; he was not aware the store had already opened as he was heading back to the loading dock with the jack. Mr. Jensen reported the incident to Store Manager Craig Christianson who then notified the loss prevention department. This department interviewed witnesses and observed the video tape over the course of the next two and one-half weeks.

The loss prevention investigator determined the claimant had violated the safety rule regarding the use of a spotter and this was a class A violation. Class A violations call for disciplinary action up to and including discharge for the first incident. Mr. James was notified on May 18, 2004 by Mr. Christianson he was being 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 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge understands the employer's concerns about safety in a warehouse type environment open to the public, especially when power equipment is being used. However, the claimant had no prior incidents regarding safety violations and it is feasible he did, in fact, lose track of time and did not realize the store had already opened when he was moving the jack back to the loading dock. This appears to be a one-time error in judgment rather than a willful disregard of the safety policies.

In addition, it does not appear the employer acted promptly to address the safety concerns as there was a gap of two and one-half weeks between the time of the incident and the discharge. 871 IAC 24.32(8) requires there to be a current act of misconduct and given the circumstances in the present case, the employer waited an unacceptably long time after the incident to discharge the claimant. Disqualification may not be imposed.

DECISION:

The representative's decision of August 5, 2004, reference 03, is reversed. Dorsenia James is qualified for benefits, provided he is otherwise eligible.

bgh/tjc