

**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**

**STEVEN H MILLER  
2403 PRIMROSE DR  
CEDAR FALLS IA 50613**

**LOWES HOME CENTERS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-00518-HT  
OC: 12/1204 R: 03  
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 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 9.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Lowe's, filed an appeal from a decision dated January 6, 2005, reference 01. The decision allowed benefits to the claimant, Steven Miller. After due notice was issued a hearing was held by telephone conference call on January 31, 2005. The claimant participated on his own behalf. The employer participated by Human Resources Manager Emily Zieser. Exhibit One was admitted into the record.

#### 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: Steven Miller was employed by Lowe's from September 8, 2003 until December 15, 2004. He was a full-time sales manager.

On November 30, 2004, the claimant received a final written warning for falsification of company documents. He had signed a sheet indicating the day's proceeds had been secured in the safe when this had not occurred. The warning advised him he could be discharged if there were any further violations of company policy.

On December 14, 2004, the district loss prevention department did a routine audit of the store, including the use of the managers' cards for overriding transactions at the registers. The managers are required to find out from the cashier what the reason is that the transaction is being overridden. The videotape is not continuous but takes a frame every few seconds. In addition, it does not have audio. The auditor reported that on three occasions in the last 30 days the claimant had not ascertained from the cashier what the reason was for the override. However, the employer did not know the dates on which these incidents occurred, and the witness had not viewed the videotapes personally.

The loss prevention auditor referred the matter to Store Manager Rick Nelson who discharged the claimant on the basis of the final warning on November 30, 2004.

#### 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).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did know the dates of the alleged violations by the claimant regarding the use of his override card. It is only know that they occurred within 30 days prior to December 14, 2004. There is no way to establish whether these alleged violations occurred before or after the final warning of November 30, 2004

In addition, the employer's witness did not personally view the videotape but did state there was no audio and it was not continuous, but frames were taken every two or three seconds. Given these factors, the administrative law judge cannot conclude that the employer has met its burden of proof. The claimant explained he might have had a call from the head cashier with an explanation, that the reason for the override was obvious such as damaged merchandise, or that the exchanges was so brief it did not get recorded. The employer has failed to rebut these explanations and disqualification may not be imposed.

DECISION:

The representative's decision of January 6, 2005, reference 01, is affirmed. Steven Miller is qualified for benefits, provided he is otherwise eligible.

bgh/sc