

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

WILLIAM A CLARK
Claimant

APPEAL NO: 13A-UI-05843-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

**OC: 04/21/13
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's May 9, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Pat Leppert, the human resource manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2004. The claimant worked as a full-time loader. The employer's rules inform employees they can be immediately discharged if they verbally or physically abuse an employee or customer or commit violence in the workplace.

On April 23, 2013, the claimant went to the sales floor to give the appliance manager, J.H., a hard time about putting down an incorrect address for a customer. J.H. asked the claimant to leave because J.H. was with a customer. The claimant would not leave and finally told J.H. in front of a customer, "No, I want to f---- take care of this now." Again, J. H. told the claimant to leave. While J.H. was using a computer, the claimant hit or thumped J.H. on back of his head. J.H. then escorted the claimant out of the store until management talked to the claimant.

When management talked to the claimant, he denied using profanity, but admitted that with three fingers he tapped J.H. on the back of his head. Based on the claimant's admission that he touched or hit another employee on the back of his head, the employer discharged the claimant for violating the employer's policy violence in the workplace policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's conduct on April 23 toward a manager amounts to work-connected misconduct. Therefore, the claimant is not qualified to receive benefits as of April 21, 2013.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since April 21, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's May 9, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 21, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits the claimant may have received since April 21, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs