

**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**

**KEVIN M KLINDT  
135 W ZELLER ST  
NORTH LIBERTY IA 52317**

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

**Appeal Number: 05A-UI-00600-H  
OC: 12/05/04 R: 03  
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 96.5-2a - Discharge

STATEMENT OF THE CASE:

Kevin Klindt filed an appeal from a decision dated January 11, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on April 4, 2005. The claimant participated on his own behalf. Lowe's participated by Human Resources Manager Nancy Sabourin. Exhibits One and Two were 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: Kevin Klindt was employed by Lowe's from September 11, 2003 until December 3, 2004. At the time of separation he was a full-time loader.

Mr. Klindt had received three written warnings regarding poor work performance the dates being January 14, July 7, and September 13, 2004. He was warned his job was in jeopardy.

On November 26, 2004, the claimant was told by the Loss Prevention Manager, Mike Musselman, to correct two safety problems. One was to take a large box down from one of the high shelves and the other was to rearrange two boxes where a very large box was placed unsteadily on a smaller box. Mr. Klindt was specifically assigned to do this work. By the end of his shift he had not performed the necessary safety corrections and did not notify anyone that he had not done so. He claimed that he was very busy as it was the day after Thanksgiving and he became involved in helping customers. He also maintained that he had been told having ladders on the sales floor during such a busy time period was not allowed. However, he did get a ladder out some time during that shift to get some boxes off of the higher shelves for a customer and was told only that he had to return the ladder immediately to the area where they were kept rather than leaving it on the sales floor.

The store manager, the operations manager, and the loss prevention manager reviewed the safety sheet and questioned Mr. Klindt about the problem. They are then required to contact regional human resources for authorization to discharge and this was received and the claimant was notified of the discharge on December 2, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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 claimant had been advised his job was in jeopardy as a result of poor work performance. He received three written warnings during 2004 and was well into the progressive disciplinary procedure. The final incident was a failure to perform necessary safety corrections by rearranging the boxes on the tallest shelves. His contention that ladders were not allowed on the sales floor is not credible as he did get a ladder out on the sales floor that same day. The only restriction was that it could not be left on the sales floor but must be returned immediately to the area where the ladders are stored.

The claimant may have legitimately have been very busy serving customers that day. However, he made no effort to contact the loss prevention manager, store director, or operations manager to notify them that he had not been able to perform the necessary safety corrections. If he had done so, the employer could have made other arrangements for the work to be done by someone else when the store was not so busy. His failure to follow the direct orders of his supervisor, and to assure the safety of workers and customers, is conduct not in the best interest of the employer.

**DECISION:**

The representative's decision of January 11, 2005, reference 02 is affirmed. Kevin Klindt is disqualified and benefits are withheld until he has requalified by earning ten times his weekly benefit amount provided he is otherwise eligible.

kjf/pjs