

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN A HECK**  
Claimant

**APPEAL NO. 08A-UI-03052-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 02/10/08 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Lowe's Home Centers, Inc. (employer) appealed a representative's March 18, 2008 decision (reference 01) that concluded Steven A. Heck (claimant) was qualified to receive benefits because he had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2008. The claimant participated in the hearing. Allison Lambert, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 2, 2005. The claimant worked as a full-time customer service associate in the paint department. At the time of hire, the claimant received a copy of the employer's harassment policy. The employer strictly prohibits sexual harassment at work. If an employee sexually harasses another employee, the employer may discharge the employee.

On January 29, 2008, the claimant and a female employee, M.H., were talking, joking around while stocking paint. When M.H. bent down to pick up a can, the claimant put his hand on her neck. When this occurred, M.H. was about a foot from the claimant's body and her head was about at the claimant's waist. After M.H. stood up, she told the claimant, "Don't do that again." She then walked away.

M.H. reported this incident to the employer on February 4. M.H. reported the claimant put his hand on her neck when she bent down and then pushed her head toward his crotch. M.H.

reported that this conduct upset her. The employer talked to the claimant on February 4. He admitted he had put his hand on her neck and that she told him not to do that again. The claimant does not know why he put his hand on her neck, but acknowledged he should not have done this.

Prior to the January 29, 2008 reported incident, the claimant's job was not in jeopardy. On February 8, 2008, the employer discharged the claimant. The employer concluded the claimant's conduct had been so out-of-line that the employer had no choice but to discharge the claimant.

The claimant established a claim for unemployment insurance benefits during the week of February 10, 2008. He filed claims for the weeks ending February 16 through April 5, 2008. He received a total of \$1,976.00 in benefits for these weeks.

#### **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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew the employer had a sexual harassment policy. The claimant understood the employer's policy. The claimant acknowledged that he should not have put his hand on M.H.'s neck. The fact M.H. immediately told the claimant never to anything like that again, supports her complaint that he held her head by his crotch. Even if this only occurred for a moment, the claimant knowingly violated the employer's sexual harassment policy on January 29, 2008. The employer discharged the claimant for work-connected misconduct. As of February 10, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 16 through April 5, 2008. He has been overpaid and must repay a total of \$1,976.00 in benefits he received for these weeks.

#### **DECISION:**

The representative's March 18, 2008 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 10, 2008. 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 claimant has been overpaid and must repay a total of \$1,976.00 in benefits he received for the weeks ending February 16 through April 5, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css