

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

MICHAEL J MURPHY
109 E KIRKWOOD
DES MOINES IA 50315

HOME DEPOT USA INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08223-DWT
OC: 07/04/04 R: 02
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, 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 are 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:

Home Depot USA, Inc. (employer) appealed a representative's July 23, 2004 decision (reference 01) that concluded Michael J. Murphy (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant 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 August 20, 2004. The claimant participated in the hearing. Rochelle Boock, an assistant 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on October 2, 2003. He worked as a full-time lumber associate. Mike Otto was the claimant's supervisor.

The employer gave the claimant at least two written warnings for problems with his attitude. On March 31, 2004, the claimant received a written warning for conduct or attitude he exhibited toward a supervisor. On April 24, the claimant received a warning after a customer complained that the claimant had been rude and short with the customer. The claimant understood his job was in jeopardy if another customer complained about him.

On June 1 or 2, the claimant helped another employee pull an order for a customer. The claimant did not know this was a will-call order. The claimant understood part of the order was picked up around noon on June 2. The claimant had a list of items to pull for the order but he was unable to pull all the items for the order on June 2.

The customer and his son came to the store about 7:10 p.m. to pick up the rest the order. The customer understood his order was to have been completely pulled at noon that day. The claimant was on his way out because he was scheduled to leave work at 7:00 p.m. The claimant told the customer he could not help him because he was already on overtime. The claimant did not think to page the employee who was working, or to page Otto to help the customer. When he told the customer and his son he could not help them because he was already on overtime, the claimant did not realize that either the customer or his son was upset with the claimant's comment. After the claimant left, the customer reported that the claimant had been rude.

The employer discharged the claimant on June 3 for again being rude to a customer.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally disregarded the employer's interests. The customer may have had legitimate reasons to complain about his order not being completed, but the claimant did not realize the employer previously told the customer his order would be pulled seven hours before he came to pick up his order.

The claimant used poor judgment when he told the customer he could not help him and did not page another employee to help the customer. Under the facts of his case, the claimant's poor judgment on June 2, however, does not rise to the level of work-connected misconduct. As of July 4, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 23, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 4, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b