

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY ANDREWS
Claimant

APPEAL NO: 11A-UI-10680-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWES HOME CENTERS INC
Employer

OC: 07-03-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 9, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 7, 2011. The claimant participated in the hearing. Robert Dillinger, Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time lumber customer service associate for Lowe's Home Centers from February 12, 2010 to July 6, 2011. He was discharged after accumulating his third written warning within one year. On August 24, 2010, the claimant received a written warning for failing to notify management he cut a lumber power saw cord in half. The claimant agrees he cut the cord but stated it was a common occurrence and he unplugged the saw and put a sign on the saw saying it was out of order. The sign posted by the saw states employees are to disable the saw and put up a notice about the saw's condition. The claimant did not notify a manager about the situation and was unaware he was required to do so. The employer skipped the usual verbal warning because this incident was considered a safety violation. On October 22, 2010, he received a final written warning for smoking a cigar on the employer's property October 13, 2010. The claimant transferred from a store in Colorado where smoking was allowed outside, away from the entrances and exits of the building, and did not know smoking was prohibited everywhere on the employer's property. On July 3, 2011, the claimant was using a sidewinder to reach pallets from the top stock and did not block the adjacent aisle to prevent injury in case a pallet was pushed over the shelf. He did have a spotter but neither the aisle he was working on nor the one on the other side was blocked. The employer's policy requires the aisles to be blocked and a spotter to be present if the employee operating the sidewinder is reaching for pallets on shelving eight feet high or above because it is a safety concern. After being reprimanded about the incident the claimant measured the shelf and

discovered it was seven feet six inches tall. On July 6, 2011, the claimant was notified by the store manager that his employment was terminated. The claimant argued that the shelf was not eight feet tall but the manager was uninterested in his protests and would not agree to accompany him to the area to measure the shelf.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant did receive three written warnings, he provided plausible explanations for each incident involved. He believed he complied with the employer's policy after cutting the lumber power saw cord and, because he smoked cigars, and rarely did so, he was unaware that smoking was prohibited anywhere on the employer's premises in its Iowa facilities. With regard to the final

incident, the claimant credibly testified he measured the top shelf of the aisle he was working on, after being told he violated the employer's policy, and it was less than eight feet tall. Although the shelf may not have been eight feet tall, he did not know that at the time he failed to block the aisles and because of the safety issues involved, he should have acted to prevent anyone from entering those aisles. That said, however, the first two incidents the claimant was warned about were sufficiently explained and the final incident does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 9, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs