

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YVONNE PASCUAL
Claimant

LOWE'S HOME CENTERS LLC
Employer

APPEAL 21A-UI-12579-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 15, 2021 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on July 12, 2021 at 8:00 a.m. The claimant, Yvonne Pascual, participated personally. The employer, Lowe's Home Centers, participated through witness, Bobbie Weepie. No exhibits were offered into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time beginning September 10, 2020 as a cashier. Claimant was employed until September 22, 2020 when she was discharged from employment.

This employer has a policy in place that requires a third party background check be completed. The third party, First Advantage, forwarded claimant's completed background check on September 22, 2020. The claimant did not pass the requirements of the background check. The employer did not have any more details regarding the specific "failure" on the background check. Claimant was discharged the same day for violation of its policy requirement to pass a background check.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

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.

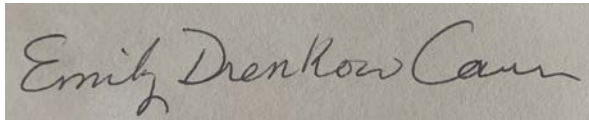
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer presented substantial evidence that claimant failed the background check that was completed upon hire. Claimant was on notice from the application, her conditional job offer and the background check consent form that her employment depended on her passing the background check. Failure to pass the background check amounted to disqualifying misconduct. Benefits are denied.

DECISION:

The April 15, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

July 26, 2021
Decision Dated and Mailed

ed/scn