

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG A BRANDT
Claimant

APPEAL NO: 07A-UI-01051-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 12/24/06 R: 03
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 January 17, 2007 decision (reference 01) that concluded Craig A. Brandt (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 February 13, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Mike Mullens, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 September 20, 2005. The claimant worked as a part-time customer service associate in the building materials department.

On December 21, a lead person saw the claimant and another employee putting away installation above the retail area. The claimant was working more than eight feet off the ground. To this work safely, the claimant and co-worker were supposed to wear a safety harness and block off the area. While the aisle had been blocked off so customers would not walk down the aisle, blockers had not been used properly.

The lead person told the claimant and co-worker to put on a harness and to use blockers. The lead person did not intend to do anything else as long as the employees put on the safety

harnesses. The lead person returned ten minutes later and the claimant and a co-worker were still putting away the installation but had not put on the safety harnesses or used any blockers.

When the employer asked the claimant why he had not followed the safety procedures, he indicated he was in a hurry to get the job done. Since there were no customers around he concluded no one would get hurt. On December 22, the employer discharged both employees. The employer concluded the claimant intentionally failed to follow the employer's safety procedure even after being told to do so.

The claimant established a claim for unemployment insurance benefits during the week of December 24, 2006. The claimant filed claims for the weeks ending December 30, 2006, through February 10, 2007. The claimant received his maximum weekly benefit amount of \$120.00.

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 section 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's failure to follow a lead person's directions to put on a safety harness and use blockers constitutes an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of December 24, 2006, the claimant is not qualified to receive unemployment insurance 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending December 30, 2006, through February 10, 2007. The claimant has been overpaid \$840.00 in benefits he received for these weeks.

DECISION:

The representative's January 17, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 24, 2006. 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 is not legally entitled to receive benefits for the weeks ending December 30, 2006, through February 10, 2007. The claimant has been overpaid and must repay a total of \$840.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs