

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE R VOELKERS
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL NO. 24A-UI-00873-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/24/23
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

STATEMENT OF THE CASE:

On January 22, 2024, Kyle Voelkers (claimant) filed a timely appeal from the January 12, 2024 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 22, 2023 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on February 12, 2024. Claimant participated. Erin Baxa represented the employer and presented additional testimony through David Manning. Exhibits 1 through 4 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Kyle Voelkers (claimant) was employed by Lowe's Home Center, L.L.C. from 2020 until December 22, 2023, when the employer discharged him from the employment. The claimant began as a part-time sales associate. The claimant subsequently worked as a full-time customer service associate, and full-time head cashier. In November 2022, the claimant became a full-time Fulfillment Team Lead. The claimant continued in the Fulfillment Team Lead position until the discharge in December 2023. The claimant's primary manager at the end of the employment was Erin Baxa, Operations Assistant Manager. The employer frequently assigned the claimant to perform customer service duties aside from the fulfillment duties.

The final incident that triggered the discharge occurred on the afternoon of December 12, 2023. While assisting a customer with a washer and dryer order, the claimant became aware that the customer wished to stack the appliances but noted that the purchase order did not include a stacking kit. In the course of assisting the customer, the claimant made disparaging remarks about appliances department personnel. Stephani Terrell, Head Cashier, was present for the

claimant's interaction with the customer. That same afternoon, Ms. Terrell sent an email message to Erin Baxa, Operations Assistant Manager to alert her to the incident. Ms. Terrell reported that while offering to assist the customer at the customer service desk, the claimant stated that he needed to make sure the order was correct "because appliances [personnel] have been pissing me off lately." Ms. Terrell reported that when the claimant noted there was no stacking kit on the washer and dryer order that the claimant pushed himself away from the counter and said, "I just want to strangle them, they get on my nerve." Ms. Terrell reported that before the customer left, the claimant stated "they don't know what they're doing" in reference to the appliances department. The claimant asserts that he said the appliances department is terrible and that they have been acting really bad and making mistakes on orders. The claimant concedes that he stated the appliances department staff had been getting on his nerves. The claimant advises that he was frustrated with having to fix orders. The claimant denies that he cursed, but hedges when asked whether he stated the appliances staff "pisses" him off. The claimant denies that he said he wanted to strangle someone. The claimant acknowledges that uttering such a comment would constitute violence. Ms. Baxa asserts that the claimant conceded he had acted in the manner described by Ms. Terrell. The claimant asserts Ms. Baxa engaged him in casual conversation a couple days after the incident and that he did not concede that Ms. Terrell's report was accurate. Ms. Terrell is still with the employer, but did not testify at the appeal hearing. The weight of the evidence establishes that the claimant did indeed make the comments that Ms. Terrell attributed to him in her timely report to the employer.

In making the decision to discharge the claimant from the employment, the employer also considered a December 10, 2023 incident involving the claimant, Ms. Terrell and a different customer. On that day, Ms. Terrell sent a message to the management staff to complain about the claimant's conduct in connection with a customer's desire to purchase a Christmas tree before the garden center area of the store opened its outside gate. In that instance, the claimant was again working at the customer service counter. Ms. Terrell reported that the claimant called her over to assist a customer by going to the garden center area to ring up the customer's Christmas tree purchase and to let the customer out through the garden center gate. Ms. Terrell reported that she declined to do that and that she mentioned that the garden center gate would be opening its doors later that morning. Ms. Terrell reports that she told the claimant that if the customer wanted to purchase the tree sooner, the customer could bring the tree to the main checkout area. Ms. Terrell reported that the claimant told her that her actions were "not good customer service" and that the claimant reminded her she was head cashier. Ms. Terrell asserted that the claimant stated, "I don't give a shit, do what you want to do." The claimant concedes that Ms. Terrell's report, except for the allegation of profanity, was accurate. The claimant asserts that he instead told Ms. Terrell, "I don't care what you do." The weight of the evidence indicates the claimant made the comments that Ms. Terrell attributed to him.

In making the decision to discharge the claimant from the employment, the employer considered an allegation and reprimand from March 3, 2023, wherein the claimant was accused of behaving in an inappropriate and/or unprofessional manner and of unwanted touching of other employees. At the time the reprimand was issued, the claimant denied knowledge of the alleged incidents. However, the claimant apologized for making anyone uncomfortable and for any unwanted touching.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 87124.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See *Henecke v. Iowa Dept. Of Job Services*, 533 N.W.2d 573 (Iowa App. 1995).

Despite Ms. Terrell's absence from the appeal hearing, the weight of the evidence in the record establishes that Ms. Terrell's accounts of the December 10 and December 12, 2023 incidents were accurate. In both instances, the claimant used profanity in the workplace that was clearly inappropriate under the circumstances. In both instances, the claimant directed disparaging remarks at coworkers in a clearly inappropriate manner. The claimant's actions in both instances disrupted the civility of the workplace, demonstrated a willful disregard of the employer's interests in maintaining a civil work environment, and constituted misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The January 12, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on December 22, 2023 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

February 28, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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 is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.