

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

DEJANA V LIPOVAC
3212 TROPIC LN APT 12
WATERLOO IA 50702

LOWE'S HOME CENTERS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03877-DWT
OC 02/29/04 R 03
Claimant: Respondent (5)

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:

Lowe's Home Centers, Inc. (employer) appealed a representative's March 30, 2004 decision (reference 02) that concluded Dejana V. Lipovac (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2004. The claimant participated in the hearing. Emily Zieser, the personnel training coordinator, 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 13, 2003, as a cashier in the cash office. The claimant started her maternity leave on July 7, 2003. The claimant planned to return to work on September 8, 2003, but was unable to return because of problems she had with her back as a result of falling during her pregnancy. As September 8, 2003, the claimant's doctor would not release her to return to work.

The claimant's doctor released her to return to work with restrictions in late December 2003. In late December, the claimant was released to work part time but was restricted to lifting so many pounds. The employer could not allow the claimant to return to work with her work restrictions. At the end of January 2004, the claimant offered to release the employer from all liability if she could return to work. The employer still would not allow the claimant to return to work.

In late February or early March 2004, the employer realized the claimant had been on a medical leave for over six months. The employer's policy indicates that if an employee is on a medical leave for over six months, the employer terminates the employment relationship. The employer sent the claimant a letter on March 2, 2004, informing the claimant she was discharged because of the length of time she had been on a medical leave of absence and had been unable to work.

As of February 29 the claimant's doctor did not restrict to working just part-time as long as she could have a break every four hours. The claimant still had some weight restrictions but the claimant did not believe the restrictions prevented her from doing any of her job duties.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant did not quit her employment. Instead, the employer discharged the claimant. After the employer realized the claimant had been on a medical leave of absence for over six months and had not yet been released to return to work without any restrictions, the employer discharged her pursuant to its policy.

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 business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct by intentionally or substantially failing to return to work. Instead, she was unable to return to work and then when her doctor released her, the employer would not allow her to return with the work restrictions she had. Since the claimant did not commit work-connected misconduct as of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 30, 2004 decision (reference 02) is modified with no legal consequences. The claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. Therefore, as of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b