

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVELYN C PUTZIER
Claimant

HOME DEPOT USA INC
Employer

APPEAL 16A-UI-06949-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/22/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 10, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A hearing was held in Sioux City, Iowa on September 21, 2016. Claimant participated personally and was represented by attorney Grant Beckwith. Employer participated through store manager Jon Hansen. Employer's Exhibits 1 through 5 were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 3, 2006. Claimant last worked as a full-time sales associate. Claimant was separated from employment on May 6, 2016, when she was terminated.

Employer has a policy explaining its standards for customer service. The policy warns that intentionally refusing to help a customer or being rude or negative to a customer could result in disciplinary action. Employer reviews the standards with every employee when they are hired. Claimant was aware being rude to customers is prohibited in a customer service job.

Toward the end of her employment, claimant became unhappy with her scheduled work shift. Claimant was required to work until 10:00 p.m. This resulted in claimant having a poor attitude in the workplace at times. On at least two separate occasions, store manager Jon Hansen spoke with claimant about her poor attitude and warned her that despite her disappointment with her scheduled work hours she needed to improve her attitude in the workplace. Claimant stated it would be hard for her to do so, but she would try.

On April 30, 2016, claimant was given a warning regarding being rude to a customer on April 8, 2016.

On May 3, 2016, a cashier asked claimant to help two customers. Claimant was busy doing other work. Claimant put her hands up in the air and indicated in an irritated tone that she could not help the customers. The customers said they did not want to be helped by claimant after her reaction. The customers then began walking out of the garden center. The cashier informed Hansen that the customers were upset. Hansen followed the customers out into the parking lot and spoke with them. The customers reported they asked a cashier to find an employee to help them. When the cashier asked claimant she seemed either too busy or irritated to help them, so they left.

Also on May 3, 2016, claimant answered the phone in a rude tone when a manager, Dillon Musilek, called the garden center. She answered the phone stating, "What do you want now?"

Hansen followed up with Musilek later that day and they discussed claimant's conduct. After consulting with its corporate human resources service, employer terminated claimant's employment on May 6, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was rude to a customer after having been warned. This is disqualifying misconduct.

To the extent claimant denies being rude to the customers, I do not find her testimony credible.

DECISION:

The June 10, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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