

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN MACE
Claimant

APPEAL NO. 11A-UI-07276-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 10-04-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 24, 2011, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 28, 2011. The claimant participated in the hearing. Allison Lambert, human resources manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Lowe's Home Centers from September 21, 2010 to April 30, 2011. On April 18, 2011, the claimant was directed to go outside to the Garden Center to work. She had not brought a coat or jacket that day and did not think she should have to go outside. She demanded to talk to the store manager and after she explained she did not have a coat and should not have to go outside, he told her everyone had to spend some time working there that day and she had to go outside, too. The claimant complied but was upset and angry about the situation. She complained to co-workers, some of whom were also complaining about working in the cold. The claimant went to the break room and called her daughter and continued complaining about having to go outside. Another cashier was in the break room and the claimant felt she was giving her "dirty looks" and the cashier said, "Why don't you quit bitching," and the claimant said, "I'm not talking to you. I'm talking to my daughter." She worked from April 18 through April 30, 2011, before her employment was terminated because the employer was told she called her supervisor a "fucking bitch," and for negligence of duties and unproductive behavior regarding working outside April 18, 2011. The claimant had received a previous written warning for using profanity toward a co-worker. She denied that charge and refused to sign the warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant denied using profanity, being negligent in her duties, and being unproductive April 18, 2011, her testimony was not particularly persuasive. The employer's witness, however, was not made aware of the hearing by the employer's representative company prior to being called for the hearing and, consequently, was unable to provide specific testimony about the events of April 18, 2011. The claimant was angry that she had to go outside, along with all other employees, because she did not bring a coat that day, and was balky and argumentative and continued to complain about it after returning to the inside of the store and going on break. However, there is not enough evidence to conclude she used profanity toward her supervisor or was negligent and unproductive. Therefore, benefits must be allowed.

DECISION:

The May 24, 2011, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw