

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER L METZGER
Claimant

APPEAL NO: 13A-UI-02992-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amber L. Metzger (claimant) appealed a representative's March 1, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Lowe's Home Centers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2013. The claimant participated in the hearing. Brandon Tidwell 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 18, 2007. Since March 2009 she worked full time as manager of the installed sales department of the employer's Davenport, Iowa store. Her last day of work was January 22, 2013. The employer discharged her on that date. The reason asserted for the discharge was falsification of documentation.

On January 7, 2013 the employer received a customer complaint regarding an installation; the customer reported that the claimant had not done an inspection of the installation as she had marked off. The employer checked into some other occasions where the claimant may not have done a personal inspection, and then confronted the claimant on January 21; the claimant acknowledged that she did not always do a walk through inspection and that sometimes she looked through a window or drove by an install. The claimant had relied on her installation team to verify that information was left for the customers and that the site was left clean, rather than personally verifying this information; she had not been trained or instructed that she must

perform those functions personally. The employer concluded that the claimant's checking off on the job site inspection forms that the items were completed without doing a personal inspection was falsification. As a result, the employer discharged the claimant on January 22. The most recent warning the claimant had received prior to this issue was a warning on August 9, 2012 for a question regarding a conflict of interest regarding sales to a family member.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion that the claimant's marking off completion of the items on the inspection form without personally doing an onsite inspection was falsification. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. The employer has not established that the claimant knew she was to be personally verifying the information on the inspection forms as compared to relying on reports from her subordinates. Under the circumstances of this case, the claimant's failure to personally do an inspection was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The most recent incident in question occurred or was discovered on January 7, 2013, two weeks prior to the employer first addressing the issue with the claimant. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 1, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs