

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD A RIZZO
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL 21A-UI-04030-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Richard Rizzo (claimant) appealed a representative's January 12, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Lowe's Home Centers (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2021. The claimant participated personally. The employer participated by Scott June, Assistant Store Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 19, 2019, as a full-time sales associate. The employer has a handbook. It did not issue the claimant any warnings regarding attendance during his employment.

The claimant had a mandatory class related to his probation on Monday mornings. He spoke with his supervisor about his unavailability for shifts on Monday mornings. The supervisor told the claimant that shifts would not be scheduled for the claimant on Monday mornings but it continued. Absence occurrences were noted on the claimant's record. The claimant contacted the regional manager. The regional manager spoke with the claimant's probation officer. The regional manager told the claimant that shifts would not be scheduled for the claimant on Monday mornings but it continued. Absence occurrences were noted on the claimant's record.

The only other incidents of absenteeism were when the claimant properly reported his absences due to illness. He provided the employer with doctor's notes. The employer did not keep the doctor's notes because it had a no-fault policy. All absences were treated the same.

On October 26, 2020, the supervisor terminated the claimant for absenteeism. In fifty-two weeks, there were fourteen absences on unknown dates for unknown reasons. Three absences were on Mondays.

The claimant filed for unemployment insurance benefits with an effective date of November 1, 2020. His weekly benefit amount was determined to be \$328.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after November 1, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was eligible for unemployment insurance benefits.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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).

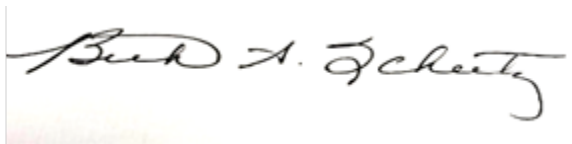
Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was unable to identify a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 12, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in cursive script, reading "Beth A. Scheetz", is written in black ink on a white background.

Beth A. Scheetz
Administrative Law Judge

April 6, 2021
Decision Dated and Mailed

bas/kmj