

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIM J REED**  
Claimant

**APPEAL NO: 14A-UI-00164-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 12/08/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Lowe's Home Centers, Inc. (employer) appealed a representative's December 27, 2013 decision (reference 01) that concluded Kim J. Reed (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2014. The claimant participated in the hearing. Myra Bobopickens appeared on the employer's behalf and presented testimony from one other witness, May Saltzman. 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:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 31, 2006. She worked full time as a return to manufacturer clerk at the employer's Cedar Rapids, Iowa store. Her last day of work was December 6, 2013. The employer discharged her on that date. The reason asserted for the discharge was a conclusion that the claimant had disposed of product rather than returning it to the manufacturer.

The employer concluded that on December 2 the claimant had thrown away about \$25.00 worth of plumbing product consisting of four pieces of PVC piping and four fittings. The employer could not locate any record of the claimant seeking credit for these items from the vendor. The employer did not confront the claimant with the information or provide any information to the claimant so that she could seek to explain what she might have done. The only inquiry made of her was by her immediate manager who asked about one piece, to which she said a credit had been processed. The claimant had not heard anything about their being an issue of eight

pieces of plumbing product until the time of the hearing. She denied that she had disposed of any product in December without obtaining the appropriate credit, but without more detailed information regarding the particular items and without access to the employer's systems she could not demonstrate how credit had been obtained.

#### **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 conclusion that she had disposed of \$25.00 worth of product without properly getting credit. The claimant denies that she did this. The employer relies exclusively on second-hand accounts and general references to its company records; however, without that information being provided first-hand and without more details regarding the supposed documentation, the administrative law judge is unable to ascertain there might have been some misinterpretation of the information. 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 December 27, 2013 decision (reference 01) is affirmed. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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