

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER K COUGILL**  
Claimant

**APPEAL NO. 13A-UI-09508-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 07/14/13**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 7, 2013, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 23, 2013. Claimant Jennifer Cougill participated. The employer had proper notice of the hearing date and time, knew about the hearing, but did not respond to the hearing notice instructions to provide a telephone number for the hearing. The administrative law judge took official notice of the agency's record (APLT) documenting the employer's failure to comply with the hearing notice instructions to provide a telephone number for the hearing.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Cougill was employed by Lowe's as a full-time receiving clerk from 2007 until July 18, 2013, when the employer discharged her for allegedly failing to perform assigned work and for allegedly leaving work early without permission. On July 5, 2013, the employer directed Ms. Cougill to perform work beyond her normal duties. The additional work entailed contacting customers about upcoming deliveries to the customer's home. On July 5, Ms. Cougill completed calls regarding deliveries to occur on Saturday, July 6, 2013, but did not complete calls regarding deliveries to be made on July 6 or 7. Ms. Cougill left at 4:00 p.m. pursuant to prior instructions received from a supervisor. Ms. Cougill did not alert anyone to the need to contact customers regarding the Sunday and Monday deliveries.

Ms. Cougill continued to appear for work until July 18, 2013, when the employer notified her that she was discharged from the employment. The employer had not previously said anything to Ms. Cougill about the July 5 concerns.

The next most recent reprimand had been issued in November 2012, when the employer alleged Ms. Cougill was rude in dealing with a department manager. The employer had issued another reprimand in March 2012 regarding Ms. Cougill's failure to complete paperwork to the employer's satisfaction.

### **REASONING AND CONCLUSIONS OF LAW:**

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer failed to participate in the hearing and thereby failed to present evidence to establish misconduct in connection with the employment or a current act. The conduct that triggered the discharge occurred on July 5 and presumably came to the employer's attention no later than Sunday July 7, 2013. The employer waited at least 11 days before speaking to Ms. Cougill about the July 5, 2013 matters. Even if the evidence had demonstrated a current act, there is insufficient evidence to establish that Ms. Cougill left work early without permission on July 5, 2013 or that she was to stay later than she did to complete additional customer calls.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The agency representative's August 7, 2013, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs