

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM C FISHER
Claimant

APPEAL NO. 13A-UI-07129-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME DEPOT USA INC
Employer

OC: 05/12/13
Claimant: Appellant (1)

Section 96.5-2-a – Suspension from Employment
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 13, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Larry Robidoux participated in the hearing on behalf of the employer with a witness, Namee De La Cruz.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer a sales associate from July 2008 to May 12, 2013.

On May 12, 2013, the claimant became upset with the assistant store manager, Larry Robidoux, after Robidoux had interrupted him while he was working and instructed him to move some boxes of light bulbs. The claimant expressed that there was too much merchandise in the receiving area that would have to be moved unnecessarily and the aisles would have to be blocked for customers. Robidoux still insisted that he move the boxes of bulbs. The claimant felt the request was contrary to the store manager's directives that this type of work be done on weekdays because of the inconvenience for customers. He thought what he wanted done didn't make sense because the bulbs weren't needed at that time. Robidoux replied that the claimant need to do exactly what Robidoux told him to do. The claimant refused and told Robidoux: "get your head out of your ass." The claimant had previous conflicts with Robidoux in which he believed Robidoux was bullying him.

After the claimant's comment, Robidoux told the claimant to clean out his locker, punch out, and the next time they talked would be with human resources. The claimant was suspended at that point for his conduct toward Robidoux,

On May 14, the claimant came to the store and filed a complaint about Robidoux's conduct. He took a personal day off. The next day, he talked to employees with the human resources department. He was told that he was not able to return to work until the matter was resolved. Employees suggested the claimant see a counselor at the employer's expense.

The claimant filed a claim for unemployment insurance benefits effective May 12, 2013, after his suspension from work. He found out from the online schedule program that he had no hours scheduled.

The claimant went to his counseling session on May 23. The next day, the store manager said that they would wait to get the counseling report and then make a decision. After the store manager received the counselor's report, she and human resources employees decided that the claimant could return to work. The store manager called his cellphone on May 31, 2013. He was not available. She left a message informing him that the employer had received the counseling report and he was clear to come back to work. She instructed him to call her about whether he wished to return to work, and if so when, so he could be scheduled. The claimant never returned the message and the employer reasonably believed he was quitting.

The claimant never contacted the employer to find out what his status was and unreasonably relied on the fact that there was no hours listed on the online scheduling as proof that he had been discharged.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The rules provide that a disciplinary suspension is to be evaluated as a discharge. 871 IAC 24.32(9). Initially, the claimant was on a disciplinary suspension triggered by his comment to Robidoux. He filed for unemployment insurance benefits while he was suspended.

The first issue then is whether the claimant was suspended for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Even though the claimant might have been justifiably upset by Robidoux's insistence that he perform an unnecessary task at an inconvenient time, the claimant's telling Robidoux to get his head out of his ass was insubordinate. It was a deliberate violation of the standards of behavior the employer had the right to expect of the claimant. The suspension was for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Also, I believe the store manager left a message telling the claimant he could return to work. The claimant responded that he did not recall getting a message from the store manager. I find that it is more likely that he did get the message but relied on the fact that no hours were scheduled on the online system as proof that he was terminated. This was not reasonable. The manager would have no reason to post hours until the claimant returned her call. The claimant should have contacted the manager to let her know he wanted to come back. The claimant clearly has a personality conflict with his supervisor, but this would not meet the standard of good cause attributable to the employer for quitting his job. See 871 IAC 24.25(22) (a claimant who leaves employment because of a personality conflict with the supervisor is presumed to have left without good cause attributable to the employer).

DECISION:

The unemployment insurance decision dated June 13, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs