

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH E WEYRICK
Claimant

APPEAL NO. 13A-UI-02431-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 01/27/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lowe's Home Centers, Inc. filed a timely appeal from a representative's decision dated February 19, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work due to excessive absences but finding that the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on March 27, 2013. Claimant participated. Participating for the employer was Mr. Bob Luker, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Beth Weyrick began employment with Lowe's Home Centers, Inc. on November 17, 2010. Ms. Weyrick was employed as a part-time cashier working from 10 to 30 hours per week. The claimant was paid by the hour. Her immediate supervisor was Mallory Wort.

Ms. Weyrick was discharged when she exceeded the permissible number of attendance infractions allowed under the company's attendance policy. Ms. Weyrick was issued a final warning based upon the number of absences she had accumulated under the company's no-fault policy on October 1, 2012. The claimant's discharge took place on January 25, 2013 based upon the claimant's most recent attendance infraction which took place on January 21, 2013. On that date Ms. Weyrick was absent due to illness and properly called in to report her impending absence two hours before the beginning of the shift speaking to the store manager explaining that she was ill with the flu. Although Ms. Weyrick presented a doctor's note verifying that she could not report to work due to illness, she was nevertheless discharged. The majority of the claimant's previous absences were related to the illness of herself or family members and were properly reported.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held, however, that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In the case at hand the evidence in the record establishes that the claimant did not have excessive unexcused absences. The majority of the claimant's absences were for illness and were properly reported. The final attendance infraction that caused the claimant's discharge took place when the claimant called in ill, properly reporting her impending absence due to illness. The claimant also provided a doctor's note verifying that she could not report to work that day due to illness. As such the claimant's final attendance infraction was excused as it was properly reported and due to illness.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient disqualifying misconduct to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 19, 2013, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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