

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kathleen Wolfe was employed by Home Depot from March 9, 1998 until August 24, 2005. She was a full-time head of the flooring department.

On August 23, 2005, Human Resources Manager Rhett Beyer received information from Store Manager Mike Smith that the claimant had been working "off the clock" on Friday, August 19, 2005. She had been directed to leave to avoid overtime, but remained in order to write up some information for three new employees who would be starting over the weekend while she was on vacation. She had worked off the clock in the past, doing certain projects at home, and recently making sure all her paperwork in the new job was current and up-to-date. Managers and supervisors had known for some time she was working at home which constitutes being "off the clock" but she had received neither formal nor informal warnings about this.

Also on August 23, 2005, Mr. Beyer received a report that Ms. Wolfe had insulted a mentally handicapped employee the night before when she was closing the store. She was waiting for all employees to punch out and leave so she could do her final closing duties. John, the handicapped employee, was urged to get to the back of the store and punch out. On the public address system Ms. Wolfe said, "Run, Forrest, run!" in reference to a movie line. She indicated she would have said this to any employee who was lingering and delaying the closing. However, since this employee was handicapped, someone reported to his mother that Ms. Wolfe had insulted him.

Mr. Beyer and Mr. Smith interviewed the claimant on August 24, 2005, and she admitted both to working off the clock and making the comment on the PA system. She was discharged for violating company policies.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant worked for Home Depot for seven years without being disciplined for any major work violations. It is evident from the testimony presented that the employer was aware, directly or indirectly, that she had done work off the clock in order to keep her duties current and to facilitate other duties and functions at the store. If this was such an egregious matter, it is to be wondered why no discipline was issued prior to this. The claimant did admit to remaining in the store on August 19, 2005, after being told to go home, but this was because, as department manager, she felt it was her responsibility to help the newly hired employees understand their job duties in her absence.

As far as the comment on the PA system to the other employee, the claimant was not making any derogatory comment to that individual, but merely quoting a line from a movie, which she would have done with any employee who was delaying the closing of the store. There was no malicious intent in either case.

The administrative law judge cannot conclude that the claimant willfully and deliberately violated the employer's policies with an intent to work any harm to Home Depot. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). Ms. Wolfe's conduct is not substantial enough to be disqualified.

DECISION:

The representative's decision of September 14, 2005, reference 01, is reversed. Kathleen Wolfe is qualified for benefits, provided she is otherwise eligible.

bgh/pjs