

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BERNARD WAGNER
1737 SIERRA DR NE
CEDAR RAPIDS IA 52402 6525**

**LOWE'S HOME CENTERS LLC
% THOMAS & COMPANY
PO BOX 280100
NASHVILLE TN 37228**

APPEAL 21A-UI-01276-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
or
Fax (515)478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowawai.org/UIIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BERNARD WAGNER
Claimant

LOWE'S HOME CENTERS LLC
Employer

APPEAL 21A-UI--01276-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The employer/appellant, Lowe's Home Centers, L.L.C., filed an appeal from the December 10, 2020, (reference 03) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. February 17, 2021. After due notice was issued, a hearing was held on February 17, 2021. Claimant participated. The employer participated through Operations Assistant Store Manager Bobbi Weepie. Exhibits 1, 2, 3, and 4 were admitted into the record.

ISSUE:

Was the claimant discharged for willful misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a delivery driver by the employer, Lowe's Home Centers LLC, from February 5, 2021, until this employment ended on September 28, 2020, when he was terminated. His immediate supervisor was Backend Supervisor William Eckles.

The employer has an Associate Standards of Conduct Policy that outlines various expectations it has of its employees. The employer provided a copy of this policy. (Exhibit 4) It states, "You are required to devote full attention to the company's interests during working hours for the benefit of Lowe's customers and are prohibited from using company property, company information or position for personal gain." On February 5, 2020, the claimant acknowledged notice of the employer's policies. The employer provided a copy of his acknowledgment. (Exhibit 3)

On June 24, 2020, the claimant had an argument with another employee about who would be driving the truck that day.

On July 7, 2020, the claimant received an initial notice disciplining him for the incident which occurred on June 24, 2020. The employer provided a copy of the initial notice the claimant

received. (Exhibit 2) During the hearing, Ms. Weepie testified this conduct was not similar to the conduct that led to the claimant's termination and did not fall under the same policy. In that context, it is not described in greater detail.

On August 2, 2020, the claimant returned to a customer's address because he thought a drill had been left the customer's address accidentally. The drill was later found on the premises of the employer in the customer's appliance that the claimant and his co-worker, George Gerlach, removed from her property.

In the following days, the employer received a complaint from the customer alleging the claimant called the customer as a pretext to return to her property either to steal items, flirt with the customer or for other reasons unrelated to his job duties. Per company practice, an associate relations consultant was assigned to investigate. The first associate relations consultant assigned to investigate left the employer shortly after being assigned the case. In the meantime, the claimant was not placed on any suspension or other measure pending the employer's investigation.

In August or September 2020, Associate Relations Consultant Masha Poston investigated the incident and found the customer's allegation that the claimant harassed her unsubstantiated, but found his behavior to violate the code of conduct because he used company property to return to the customer's home for a reason unrelated to the employer's interests. As part of her investigation, she interviewed Mr. Gerlach.

On September 28, 2020, the claimant was brought into the office of Store Manager Terry Kelchen by Operations Assistant Store Manager Bobbi Weepie. He was presented with a termination notice dated September 24, 2020. The termination notice states the claimant engaged in conduct that violated Lowe's Associate Standards of Conduct. The employer provided a copy of the termination notice. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Since the claimant is eligible for benefits, the issue regarding overpayment is moot.

Iowa Admin. Code r. 871-24.32(1)a provides:

(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

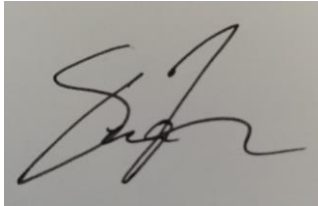
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The administrative law judge notes the claimant and the employer dispute when the claimant was presented with the termination notice. The claimant believes the termination meeting occurred on August 29, 2020. Under either timeline, the claimant's termination meeting was too remote to the incident occurring on August 2, 2020 to be current misconduct. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The December 10, 2020, (reference 03) unemployment insurance decision is reversed. Benefits are granted provided the claimant is otherwise eligible. Since the claimant is eligible for benefits, the issue regarding overpayment is moot.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 8, 2021
Decision Dated and Mailed

smn/lj