

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L GIBBINS
Claimant

APPEAL NO: 10A-UI-13540-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 07/11/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anthony L. Gibbons (claimant) appealed a representative's September 22, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Lowe's Home Centers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2010. The claimant participated in the hearing and was represented by Charlene Heater, legal assistant, who also provided testimony on his behalf. The employer received the hearing notice; a representative responded by sending a notice to the Appeals Section on November 3, 2010 indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 2, 2007. He worked full time as a zone manager in the employer's West Des Moines, Iowa store. His last day of work was July 15, 2010. The employer discharged him on that date. The reason asserted for the discharge was allegedly leaving the store unsecured on June 25.

On June 25 the claimant and another manager were responsible for closing and securing the store. Before leaving, the claimant ensured that the doors were locked and the alarm system was set. The system functions in such a way that should there be an unlocked door at the time the system is set, the alarm would go off within one minute. The alarm did not go off as the claimant and the other manager left the store, which took more than a minute after leaving the building.

On June 26 the store manager indicated to the claimant that he had gotten a call from the security company about a half hour after the claimant left the store, indicating that the alarm had gone off and that there was an unlocked door. He told the claimant he needed a written

statement as to what had happened, which the claimant provided, indicating that when he had left, all the doors were locked and the alarm was set. The other closing manager provided a similar written statement. The store manager did not indicate there would be any further review, and the claimant assumed that was the end of the matter. He continued to work as usual between June 26 and July 15. On July 15 the store manager informed the claimant he was being discharged because of the belief that the claimant had not locked a door before leaving the store on June 25. There had been no prior history of disciplinary action of any kind regarding the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the belief he had left a door unlocked when he left the store on June 25. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact did leave a door unlocked. Further, the employer has not established that an isolated incident such as this should be treated as misconduct. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Finally, even if it might otherwise be misconduct, there is no current act of misconduct here as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred almost three weeks prior to the employer's discharge of the claimant, and he had not been placed on notice of any pending investigation or potential discipline.

The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 22, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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