

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PHILIP J EVES**  
Claimant

**LOWE'S HOME CENTERS LLC**  
Employer

**APPEAL 19A-UI-06664-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/28/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Philip Eves (claimant) appealed a representative's August 19, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Lowe's Home Centers (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 17, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in March 2013, as a part-time stocker. The claimant signed for receipt of the employer's policies on Feb 25, 2015. The employer did not issue the claimant any written warnings during his employment.

The claimant took long periods of time to travel to Australia each year and the employer always accommodated him. They allowed him to use his vacation and then use unpaid leave for his absences. In July 2019, the claimant was planning for a visit from a friend from Australia. On or about June 19, 2019, the claimant entered an online request for unpaid leave from July 3 to July 31, 2019. The supervisor told the claimant that employer wanted the claimant to use his vacation. She said he could not take leave without pay. The claimant understood this to mean that he had to use his two or three days of vacation first before taking the leave without pay because of the employer's history of doing so. He told the supervisor to change it and he would go with that.

The claimant was absent from work on July 3, 4, and 5, 2019. On Friday, July 5, 2019, the claimant went to work to talk to his supervisor because someone told him that he had been

terminated. The supervisor said that he was fired for being absent for three days without notice. The claimant said that he requested leave, they had talked, and it was a miscommunication. He asked if he could start again on Monday. The supervisor told him he had been fired and he had to speak to her manager. She would have her manager contact the claimant.

The manager never contacted the claimant. The following week the claimant found the manager to discuss the confusion. The manager told the claimant he was separated from employment for failing to notify the employer of his absence for three days.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct serious enough to

warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The claimant and his supervisor did not communicate. Both knew that the claimant’s actions had no wrongful intent. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The representative’s August 19, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs