

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON E RICHTER
Claimant

APPEAL NO. 12A-UI-01975-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

**OC: 05/01/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Lowe's Home Centers, Inc. filed a timely appeal from an unemployment insurance decision dated February 16, 2012, reference 02, that allowed benefits to Jason E. Richter. Due notice was issued for a telephone hearing to be held March 14, 2012. Neither party responded to the notice. This decision is based on information submitted by the claimant for fact finding.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Jason E. Richter was employed by Lowe's Home Centers, Inc. from May 31, 2011 until he was discharged January 6, 2012. He was discharged for an incident that had occurred on December 2, 2011. Mr. Richter operated power equipment inside the store without utilizing a spotter. He did not know that he was required to use a spotter. Mr. Richter ordinarily worked outside the store where spotters were not required. His supervisor told him on December 3, 2011 that failing to use a spotter was a safety violation. Nothing more was said until the day of discharge. Mr. Richter had received no prior warnings.

Although the employer filed a protest when Mr. Richter filed an additional claim for benefits in January 2012, it provided no factual information for fact finding or for the contested case proceeding.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

Iowa Code § 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. See Iowa Code § 96.6-2. The employer has provided no evidence whatsoever for this record. The claimant's statements at fact finding do not indicate disqualifying misconduct. Benefits are allowed.

The employer representative is cautioned that repeated failure to provide evidentiary information for fact finding and for appeals may result in it being suspended from representing employers before the agency.

DECISION:

The unemployment insurance decision dated February 16, 2012, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs