

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA L CONGER**  
Claimant

**APPEAL NO. 09A-UI-01078-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 11-16-08 R: 12  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 10, 2009. The claimant did participate. The employer did participate through Brandon Tidwell, Human Resources Manager and Jeff Sunny, Store Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a department manager of inside lawn and garden full time beginning May 3, 2003 through November 20, 2008 when he was discharged.

As a department manager was required to get the complete cycle counts done on a weekly basis to be turned in on a monthly basis. According to the employer it should take the claimant only fifteen to twenty minutes per week to perform the tasks necessary to complete the cycle count. As a department manager the claimant had been required to perform the cycle count for years. The claimant demonstrated an ability to complete the cycle count on many many occasions. The claimant had the ability to delegate duties to subordinates so that he would have more time to complete his duties but chose not to do so.

The claimant failed to complete the cycle count due on November 9. The claimant was sent an e-mail on November 17 asking why his cycle count had not been completed. The claimant told the loss prevention manager that he would need an e-mail reminder to let him know when the cycle count was due. The claimant had been responsible for completing a weekly cycle count for years and should not have required an e-mail reminder about when it was due.

The claimant had previously been warned about his failure to complete the cycle count in a timely manner on August 15, 2008. He was also warned on July 18, 2008 and May 19 about his failure to timely complete the cycle count.

On October 2, 2008 the claimant was given a final written warning for poor job performance and was told that any further infractions could lead to his discharge.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so is evidence of his willful intent not to do so and is misconduct. The administrative law judge is persuaded that the claimant had ample opportunity to complete the cycle count as he had repeatedly done so in the past. The claimant also had the ability to delegate to other employees so that he could work the one hour per week to perform the cycle count. The claimant had been warned repeatedly about the necessity of completing the cycle

count but did not do so. Under these circumstances the claimant's failure to perform his required job duties is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The January 16, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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