

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY J NEAL
Claimant

APPEAL NO: 13A-UI-05048-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

**OC: 04/07/13
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 23, 2013, reference 01, that held the claimant was not discharged for misconduct on April 6, 2013, and benefits are allowed. A telephone hearing was held on June 4, 2013. The claimant participated. Ryan Hogan, Loss Prevention Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on October 3, 2011, and last worked for the employer as a full-time employee in the electrical department on April 5, 2013.

The employer discharged claimant on April 6, 2013 for using a merchandise card on February 13 to purchase a store item valued at \$32.57.

The designated employer representative was not available at the phone number provided when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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 administrative law judge concludes employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on April 6, 2013.

The employer documentation shows the policy violation occurred on February 13 that is not a current act of misconduct.

DECISION:

The department decision dated April 23, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on April 6, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll