

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN D METCALF
Claimant

APPEAL NO. 11A-UI-05163-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

**OC: 03/13/11
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jonathan Metcalf filed an appeal from a representative's decision dated April 8, 2011, reference 01, which denied benefits based on his separation from Lowe's Home Centers, Inc. (Lowe's). After due notice was issued, a hearing was held by telephone on May 12, 2011. Mr. Metcalf participated personally and was represented by Bruce Stoltze, Jr., attorney at law. The employer participated by Bob Schrodt, human resources manager.

ISSUE:

At issue in this matter is whether Mr. Metcalf was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Metcalf was employed by Lowe's from May 21, 2007 until March 15, 2011. He was last employed as flooring department manager, a position he assumed in July of 2009. He was discharged because he violated a policy that prohibits employees from signing contracts for purchases made by family members.

The purchase at issue took place on February 14, 2011 and came to the employer's attention on February 18. The employer completed its investigation on February 21. A decision was made to recommend termination and the matter was forwarded to district managers for approval on February 22. Mr. Metcalf continued to work and was not put on notice that he was being considered for discharge. The employer received permission to discharge on March 13 and Mr. Metcalf was notified of the discharge on March 15, 2011.

While the discharge was pending, the employer received a customer complaint on March 4. The customer complained that Mr. Metcalf had spit into a trash can on the sales floor. He had recently undergone dental surgery and found that saliva sometimes built up in his mouth. Therefore, he had to spit out the excess approximately two times each hour. The employer did not take any disciplinary steps at the time of the complaint.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, the final act that prompted the decision to discharge occurred on February 14 and the investigation was completed by February 21. However, Mr. Metcalf was not discharged until three weeks later.

Inasmuch as the employer had concluded its investigation of the matter, there was no justification for the delay in discharging Mr. Metcalf or at least putting him on notice that termination had been recommended. The employer's delay precludes considering the February 14 incident as a current act of misconduct. Even if the complaint of March 4 were considered the final act, the employer still waited over a week before discharging him. Because the employer failed to establish a current act of misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated April 8, 2011, reference 01, is hereby reversed. Mr. Metcalf was discharged by Lowe's, but a current act of misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw