

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

68-0157 (7-97) – 3091078 - EI

**CHRISTINA R TEGTMEIER  
13 – 6<sup>TH</sup> ST SW  
OELWEIN IA 50662**

**LOWE'S HOME CENTERS INC  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-01771-HT  
OC: 01/11/04 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Lowe's, filed an appeal from a decision dated February 12, 2004, reference 02. The decision allowed benefits to the claimant, Christina Tegtmeier. After due notice was issued, a hearing was held by telephone conference call on March 9, 2004. The claimant participated on her own behalf. The employer participated by Personnel Training Coordinator Emily Zeiser and Store Manager John Wakeman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christina Tegtmeier was employed by Lowe's from February 13, 2003 until January 13, 2004. She was the full-time team leader in hardware. At the time she was hired the claimant attended orientation and training in the use of equipment and safety procedures. Failure to follow required safety procedures is a Class A violation and discharge may occur for one incident.

On January 13, 2004, the claimant was using a piece of equipment called a cherry picker, which raises off the floor so employees may access items on the upper shelves. Ms. Tegtmeier had been using it for approximately an hour making several trips up and down. One time, as she bent over, she realized she had not connected her tether for that one trip, and connected it immediately. She was untethered for less than two minutes. This was witnessed by the safety manager who reported it to Store Manager John Wakeman. Under company policy the claimant was discharged for failure to comply with the safety policies.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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(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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 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. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). In the present case the claimant, for one brief period, had forgotten to reconnect her tether when using the cherry picker. This was a one-time mistake, and not a deliberate course of conduct intended to ignore or willfully violate the employer's policies. Although the company policy calls for discharge for one violation, the administrative law judge cannot conclude that this rises to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of February 12, 2004, reference 02, is affirmed. Christine Tegtmeier is qualified for benefits, provided she is otherwise eligible.

bgh/b