

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD H ZUELZKE
Claimant

APPEAL NO. 10A-UI-05483-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 02/28/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 30, 2010, reference 01, which denied benefits based upon the claimant's separation from Lowe's Home Centers, Inc. After due notice, a telephone hearing was held on May 27, 2010. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Todd Zuelzke was employed by Lowe's Home Centers from February 26, 2008 until February 28, 2010 when he was discharged from employment. The claimant worked as a part-time sales associate and was paid by the hour.

Mr. Zuelzke was discharged based upon the repetitive nature of his absences from work and tardiness. While employed as a part-time associate at Lowe's, Mr. Zuelzke also attends a school and coaches baseball. Due to his obligations related to his educational pursuits and his coaching endeavors, the claimant often was unable to report for scheduled work at Lowe's Home Centers. At times mistakes were made in scheduling after Mr. Zuelzke had provided advance notice of days that he needed to be off. The claimant had been warned by the employer that his attendance was unsatisfactory on more than one occasion.

The final incident that resulted in the claimant's termination from employment took place on February 16, 2010 when the claimant was delayed from reporting to work on time by an unexpected school commitment and weather conditions. Although Mr. Zuelzke had the opportunity to call and notify the employer of his impending tardiness, he did not do so. The claimant reported to work approximately 20 minutes late that day.

Based upon that infraction and previous warnings that had been served upon the claimant, Mr. Zuelzke was discharged from employment at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes Mr. Zuelzke was discharged for misconduct in connection with his employment.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The evidence in the record establishes that Mr. Zuelzke was often absent from work and at times had reported to work late due to personal obligations which included educational pursuits and athletic coaching as well as social events. Although the claimant was aware that the employer considered his attendance to be unsatisfactory, Mr. Zuelzke did not provide advance notice of his impending tardiness on February 16, 2010 although the claimant reasonably knew that he would be late and he had the opportunity to telephone his employer. The Iowa Supreme

Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and that the concept includes tardiness, leaving early, etcetera. The Court further held that attendance infractions due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. Mr. Zuelzke failed to provide notice to the employer of his most recent attendance infraction although he knew that his employment was in jeopardy. The claimant's conduct showed a disregard for the employer's interests and standards of behavior and thus was disqualifying. Benefits are withheld.

DECISION:

The representative's decision dated March 30, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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