

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON D LEWIS
Claimant

APPEAL NO. 16A-UI-05368-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

**OC: 04/17/16
Claimant: Appellant (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.26(21) – Quit in Lieu of Discharge

STATEMENT OF THE CASE:

Jason Lewis filed a timely appeal from the May 9, 2016, reference 01, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. Lewis had voluntarily quit on April 22, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 25, 2016. Mr. Lewis participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received and evidence.

ISSUE:

Whether Mr. Lewis separated from the employment for a reason that disqualifies him for benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Lewis was employed by Lowe's Home Centers, Inc. as a full-time customer service associate until April 22, 2016, at which time the employer discharged him from the employment. The employer expected Mr. Lewis to be available to work anytime between 5:00 a.m. and 11:30 p.m. Prior to the separation, Mr. Lewis' home situation changed and Mr. Lewis began to need a work scheduling accommodation so that he could drop his children off at school and collect them from an afterschool program. Mr. Lewis' children have emotional issues relating to past trauma. The Iowa Department of Human Services deemed it appropriate and necessary for Mr. Lewis to drop off the children and collect the children in light of the changed home situation. A few days before April 22, 2016, the employer presented Mr. Lewis with the option of resigning or being discharged from the employment. Under the circumstances, Mr. Lewis elected to provide a two-week notice that he would be quitting. A few days later, the employer directed Mr. Lewis to turn in his employee badge and to not return for future shifts.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious

enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not participate in the appeal hearing and did not present any evidence to rebut Mr. Lewis's testimony. The evidence in the record establishes that the employer compelled Mr. Lewis to submit a resignation in lieu of immediate discharge from the employment and that the employer shortly thereafter discharged Mr. Lewis from the employment. The employer has not presented any evidence to establish misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lewis was discharged for no disqualifying reason. Accordingly, Mr. Lewis is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 9, 2016, reference 01, decision is reversed. The claimant was discharged on April 22, 2016, for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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