

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R TRUDE
Claimant

APPEAL NO. 10A-UI-09658-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 05-30-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 1, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 25, 2010. The claimant did participate. The employer did participate through Bob Schrod, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a delivery driver full time beginning October 26, 2009 through May 28, 2010 when he was discharged.

On May 25, 2010 the claimant as a delivery driver was responsible for making sure that all of the loads he delivered were properly secured. On May 25, 2010 the claimant was seen on surveillance tape being instructed by Kelly Keene to secure the load. After Mr. Keene left the area, the claimant took the load out without securing it as he had been instructed. The claimant ignored Mr. Keene's instruction. As a result of his failure to secure the load, a countertop was damaged during transit. The claimant had prior discipline for failing to accurately perform his job duties. On December 8, 2009 he was written up after a customer complained that he backed into a tree in his yard while making a delivery. In the same write up the claimant was also written up for damaging a customer's floor during a December 3, delivery. That warning put him on notice that further infractions could result in his discharge.

On November 24, 2009 the claimant was written up for several instances of damaging appliances while delivering them to homes. In the same write up he was also reprimanded for hitting a car on November 3, while making a delivery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was told to secure the load and did not do so resulting in damage to counter tops being delivered to customers. He had been disciplined previously for repeated instances of failure to carefully and accurately make his deliveries. Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The July 1, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs