

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

DEBORAH L ISLEB
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NEVADA IA 50201

LOWE'S HOME CENTERS, INC.
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09459-RT
OC: 08-01-04 R: 02
Claimant: Respondent (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Lowe's Home Centers, Inc., filed a timely appeal from an unemployment insurance decision dated August 23, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Deborah L. Isleb. After due notice was issued, a telephone hearing was held on September 27, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Marcella Burkheimer, Human Resources Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time sales specialist from September 18, 2001 until she was discharged on July 19, 2004. The claimant was discharged for poor job performance and in particular, failing to follow up with customer inquiries. On June 24, 2004, after receiving a final written notice for not following up with a customer inquiry but entering into the computer that the sale had been completed, the claimant made a purchase requiring installation. This required a follow-up. The claimant did not follow up. The customer called on July 2, 2004 and the claimant informed the customer that she would call the customer back in one hour. The claimant did not do so. The customer called back on July 7, 2004 and indicated the claimant had not called. Eventually, the employer had to refund the order and the employer lost the sale. The claimant was then discharged. Earlier, on May 3, 2004, another customer had made an installation purchase. On May 5, 2004, the claimant indicated in the employer's system that the sale had been completed but it had not. The claimant had again failed to follow up. On June 6, 2004, the customer informed the employer that the item had not been installed. Again, the employer had to refund the order and lost a sale. For this, the claimant received a final written notice on June 24, 2004.

On May 18, 2004, the claimant got a written warning for poor job performance when she was not meeting her budget. On March 2, 2004, the claimant received another written warning for job performance namely, was not making comments on sales as required. The claimant was aware of the necessity to make comments on sales but the claimant failed to do so and received a written warning. On May 17, 2003, the claimant received another written notice for job performance when she failed to follow up with two other customers. Pursuant to her claim for unemployment insurance benefits filed effective August 1, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,610.00 as follows: \$322.00 per week for five weeks from benefit week ending August 7, 2004 to benefit week ending September 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

The employer's witness, Marcella Burkheimer, Human Resources Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on July 19, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Burkheimer credibly testified that the claimant repeatedly failed to follow up on installation sales. On June 24, 2004, the same day the claimant received the notice discussed below, the claimant made an installation purchase. This required follow-up by the claimant but the claimant did not follow up. The customer called on July 2, 2004 regarding the installation and the claimant said that she would call back in one hour. The claimant never did. The customer called the employer back on July 7, 2004 to inform the employer that the claimant had not

called her. The employer ended up losing the sale and had to refund the order. The claimant was then discharged.

On May 3, 2004, another customer made an installation purchase from the claimant and on May 5, 2004, the claimant entered on the employer's systems the sale was complete when it had not been and the claimant did not follow up with the customer. On June 6, 2004, the customer informed the employer that the installation had not occurred and again the employer lost the sale and had to refund the order. For this, the claimant received the final written notice discussed above. The claimant also received other related written warnings as set out in the findings of fact. In the absence of any evidence to the contrary, the administrative law judge is constrained to conclude that the claimant's acts or omissions are deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and at the very least are carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. Despite repeated warnings, the claimant continued to fail to follow up on installation purchases, in one case falsifying records in the computer indicating that the sale was completed when it was not and in another case informing the customer that she would call back in an hour and then never calling the customer back. The claimant's acts or omissions were deliberate and willful and were far more than mere inefficiency or unsatisfactory conduct or failure in good performance as a result of inability or capacity. The claimant was fully aware that she needed to get back to these customers and did not.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,610.00 since separating from the employer herein on or about July 19, 2004 and filing for such benefits effective August 1, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa Law.

DECISION:

The representative's decision of August 23, 2004, reference 01, is reversed. The claimant, Deborah L. Isleb, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$1,610.00.

pjs/b