

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MIKE WILLIAMS**  
Claimant

**LOWE'S HOME CENTERS LLC**  
Employer

**APPEAL 19A-UI-07632-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/18/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Lowe's Home Centers (employer) appealed a representative's September 20, 2019 decision (reference 01) that concluded Mike Williams (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 21, 2019. The claimant participated personally. The employer participated by Michael Veach, Paint, Floor, Home Décor Manager, and Erin Bishop, Administrative Support Associate.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 13, 2014, as a full-time paint customer service associate. He signed for receipt of the employer's electronic handbook on September 13, 2014.

On January 20, 2019, the employer issued the claimant a final written warning for moving boxes of plastic bottles from a higher to lower shelf by dropping them. The employer said that it was a safety violation and could create a problem. The claimant signed that he had been talked to by the employer but did not receive a copy of the warning.

On July 6, 2019, the manager documented on the computer system that he spoke to the claimant about walking by a customer without helping them. The claimant did not sign that he was given a warning and did not remember the conversation.

The claimant helped a customer on an unknown date who wanted a discontinued outdoor stain product. The claimant offered two other products. He matched the colors and ultimately sold the customer the product she chose. He told the customer that the employer wanted every customer to be satisfied and explained the returned policy.

On July 31, 2019, the customer returned to the store and complained about the claimant's "rude and condescending service". The customer returned her purchase and said she would not be shopping at the store. The customer did not explain what was "rude and condescending" about the claimant's service.

The manager asked the claimant to complete a statement on August 4, 2019, regarding the incident. The claimant did not remember the incident on August 4, 2019. The statement was sent to the employer's corporate office on August 4, 2019. On August 20, 2019, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of August 18, 2019. The employer provided the name and number of Alex Starks as the person who would participate in the fact-finding interview on September 18, 2019. The fact finder called Alex Starks but Alex Starks was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer was discovered on July 31, 2019. The claimant was not discharged until August 20, 2019. The two incidents are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

#### **DECISION:**

The representative's September 20, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn