

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA RANNEY
Claimant

APPEAL NO. 06A-UI-09355-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 08/20/06 R: 04
Claimant: Appellant (2)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Shawna Ranney (claimant) appealed a representative's September 13, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Lowe's Home Centers, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 4, 2006. The claimant participated in the hearing. Nancy Helmick, the human resource manager, and Rick McKallister appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 17, 2004. The claimant worked about 30 hours a week as a cashier. Heather Bester was her supervisor.

On December 5, 2005, the claimant received a written warning for questioning a supervisor's instructions. The employer considered this behavior as insubordinate. In the spring of 2006, McKallister talked to the claimant about wearing inappropriate clothes to work. The claimant understood the store manager felt the shirt she wore was too short because skin was exposed when she sat. After the employer talked to her, the claimant wore a t-shirt under her shirt.

Helmick started working at the same store as the claimant in March 2006. The employer's policy allows employees to wear jeans to work, but they are not supposed to be frayed or have any holes. Between March and August 10, 2006, the claimant wore the jeans she wore on August 10 many times. No one told the claimant these jeans were not appropriate until August 10. The jeans the claimant wore were frayed somewhat around the pocket and at the bottom. (The claimant purchased the jeans frayed around the pockets.) When Helmick told the claimant these jeans were inappropriate, the claimant explained that she only had two pairs of

jeans, was a single mother and did not have money to buy another pair of jeans at that time. The claimant indicated that when she had some extra money, she would buy another pair of jeans.

On August 12, 2006, the claimant wore the same jeans to work. The claimant knew Helmick would be at work on August 12 to do payroll. Helmick saw the claimant at work on August 12 wearing the same jeans as she had been wearing on August 10. Helmick did not say anything to the claimant. Instead, Helmick reported the August 10 conversation she had with the claimant and her August 12 observations to upper management. The employer decided to discharge the claimant on August 16 for insubordination. On August 18, the employer informed the claimant she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or SUBSTANTIALLY disregarded the employer's interests. While the store manager had previously talked to the claimant about the inappropriateness of some of the shirts the claimant wore to work, the claimant corrected this concern.

The evidence indicates the first time anyone talked to the claimant about the jeans she wore was when Helmick talked to her on August 10, 2006. Since the claimant had been wearing these jeans to work the last six months, told Helmick she did not have any money to buy a new pair of jeans for work and only had two pairs of jeans, the employer's expectation that the claimant would immediately buy another pair of jeans for work is not reasonable. Also, since the claimant had been wearing the jeans for the last six months, there is no explanation as to why Helmick had not previously addressed this issue with the claimant or no one had given her a warning for violating the employer's dress code. The claimant's description of her jeans does not indicate she substantially violated the employer's dress code policy. Since Helmick's expectations were not reasonable, the claimant did not commit work-connected misconduct when she wore the same pair of jeans on August 10 and 12. For unemployment insurance purposes, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 13, 2006 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs