

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE R WHITE
Claimant

APPEAL NO. 12A-UI-04200-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 03/11/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 5, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 7, 2012. Claimant participated. Employer participated by Ms. Pat Leppert, Human Resource Manager. Employer's Exhibits One through Nine were received into evidence.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Katie White was employed by Lowe's Home Centers, Inc. from June 4, 2004 until March 9, 2012 when she was discharged from employment. Claimant held the position of full-time flooring specialist and was paid by the hour. Her immediate supervisor was Trina Snyder.

Ms. White was discharged from her employment with Lowe's Home Centers based upon an incident that took place on March 3, 2012. On that date, the claimant's manager alleged that Ms. White had made threatening statements to her. Ms. Snyder stated that the claimant had repeatedly made statements such as, "I want to stab you," "Can I stab you?" Based upon the serious nature of the allegations made by the department manager, the company investigated.

During the investigation other employees made statements indicating that Ms. White and her manager had had a poor working relationship and that Ms. White's dissatisfaction with her department manager had been escalating. The statements also indicated that the claimant had made insubordinate statements to her manager and had refused work-related directives. When the claimant was interviewed about the allegation, she was given an opportunity to read her department manager's statement. Ms. White responded that if she had made the statement she had only made it once and that she had done so in a joking manner. Based upon the

company's zero tolerance for violence or threats of violence in the workplace policy, a decision was made to terminate Ms. White based upon the allegations that had been made against her.

It is the claimant's position that she does not "recall" the incident whatsoever. The claimant denies agreeing that she had made the statement about "stabbing" her supervisor and denies acknowledging that the incident may have taken place. The claimant also denies receiving or viewing a copy of the company's policy on violence or threats of violence in the workplace. It is the claimant's position that if the statement had been made, it was made solely in jest and should not result in her termination from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Although the employer has the burden of proof in this matter, the employer chosen not to bring a firsthand witness with personal knowledge and the ability to testify under oath about the incident in question. The employer has chosen to rely upon the hearsay testimony of the company's human resource manager and the statements of other individuals who were not present during the incident in question that resulted in the claimant's discharge from employment.

In this matter, the claimant was discharged from employment based upon the statements of her department manager that the claimant had made repeated references to stabbing her

department manager. The evidence in the record does establish that Ms. White had been repeatedly insubordinate and unwilling to follow reasonable work-related directives given to her by her department manager and the evidence establishes that the poor working relationship between the parties had escalated. The administrative law judge finds the testimony of the human resource manager that the claimant had acknowledged the incident to be credible. The administrative law judge also concludes that the claimant knew or should have known that making statements, even in a joking manner, regarding violence in the workplace would be unacceptable to her employer and could jeopardize her employment. The administrative law judge finds the claimant's testimony that she does not remember the incident in question whatsoever and that she was not aware of any policy that prohibited violence or threats of violence in the workplace to strain credibility.

For the reasons stated herein, the administrative law judge concludes that the employer was able to meet its burden of proof by a preponderance of the evidence in establishing disqualifying job misconduct. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 5, 2012, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs