

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

MAX D GLOVER
29567 – 115TH AVE
DONAHUE IA 52746

LOWE'S HOME CENTERS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01895-JT
OC: 01/16/05 R: 04
Claimant: Appellant (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

STATEMENT OF THE CASE:

Max D. Glover filed a timely appeal from the February 14, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 10, 2005 at the Workforce Development Center in Davenport. Mr. Glover participated in the hearing. Lowe's did not participate in the hearing. Exhibits A through E were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Max D. Glover was employed by Lowe's as a full-time Department Manager from February 16, 2002 until January 5, 2005, when Darrell Horn, Store Manager, discharged him for allegedly failing to perform satisfactory work.

At the time Mr. Glover was discharged, Mr. Horn provided few details about why he was being discharged. Instead, Mr. Horn indicated that things were not working out, that he had spoken with headquarters, and that Lowe's was going to let Mr. Glover go. The meeting took five minutes. Mr. Horn made no reference to a "last straw" or final incident that prompted him to discharge Mr. Glover. Mr. Horn had just joined the Davenport Lowe's store in April 2004. In May, a couple of Mr. Glover's supervisors had pulled Mr. Glover aside, apparently in response to Mr. Horn's arrival as the store manager, and told Mr. Glover to take it easy and not to be working extra hours. They indicated they did not want Mr. Glover to get "burned out." Mr. Glover was in the habit of working well in excess of 40 hours per week in his position as Department Manager for Inside Lawn and Garden and Outside Power Equipment.

In June 2004, Mr. Glover took a brief vacation with the approval of his immediate supervisor, Zone Manager Michael Traphagen. While he was on vacation, he received a call that he would need to immediately come to the store because his department was messy. Otherwise, he would receive a written reprimand. Mr. Glover was out of town and was not able to come to the store at that time. The next week, he received a written reprimand for having a messy department and was chastised for being on vacation.

By early August 2004, Mr. Glover was being forced to spend significant time working in other departments, which made it more difficult for him to fulfill his responsibilities in his own. Mr. Glover brought his concerns to Mr. Horn, who was unsympathetic and curt in his remarks.

In October 2004, Mr. Glover received a written reprimand after a customer complained about an unfriendly employee in Mr. Glover's department. Mr. Glover had not been at the store when the customer had interacted with the unfriendly employee.

In late October, Mr. Glover arrived for a night shift and noticed that the snow blowers in the front of the store were not locked, as they should be. The store had experienced increased thefts of equipment displayed outside in front. Upon noticing the unsecured equipment, Mr. Glover sought the manager on duty. Only the manager on duty had a key to unlock and lock the outside merchandise. Despite the fact that Mr. Glover did not have a key to the merchandise, Mr. Horn held Mr. Glover responsible for the losses stemming from the thefts.

Mr. Glover was demoralized by the experience of working under Mr. Horn. In November 2004, Mr. Horn pulled him aside and asked him what his problem was, because he did not seem especially friendly to Mr. Horn. Mr. Horn and another manager questioned what had happened to the demeanor that Mr. Glover had previously displayed. Mr. Glover took the opportunity to share that he would be much happier if the management team was again supportive. Mr. Horn responded that so long as Mr. Glover continued to do his job he would not be fired. Mr. Glover continued to put forth effort. The sales numbers in his department continued to reflect that effort and Mr. Glover consistently qualified for bonus. Mr. Glover was dumbfounded by Mr. Horn's announcement on January 5, that he was being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Glover was discharged for misconduct in connection with his employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. 871 IAC 24.32(8). Allegations of misconduct without additional evidence shall not be sufficient to resolve in disqualification for benefits. 871 IAC 24.32(4). If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. 871 IAC 24.32(4).

Since Lowe's did not participate in the hearing, the evidence in the record is limited to Mr. Glover's testimony and the exhibits he submitted. The evidence in the record fails to establish a "current act" of misconduct that could provide the necessary basis for disqualifying Mr. Glover for benefits. See 871 IAC 24.32(8). The employer has failed to meet its burden of

corroborating its allegation that Mr. Glover engaged in misconduct. See 871 IAC 24.32(4). Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Glover was discharged for no disqualifying reason. Accordingly, benefits are allowed, provide Mr. Glover is otherwise eligible.

DECISION:

The Agency representative's decision dated February 14, 2005, reference 01, is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/sc