

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM D HELLING
Claimant

APPEAL NO: 08A-UI-11456-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 11/09/08 R: 04
Claimant: Respondent (2/R)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Lowe's home Centers, Inc. (employer) appealed a representative's December 1, 2008 decision (reference 01) that concluded William D. Helling (clamant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2008. The claimant participated in the hearing. July Stienstra, the human resource manager, and Mike Bryson, the store manager, 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 August 1, 2005. The clamant worked full time as a team leader in the hardware department. The claimant understood employees should not swear or use profanity at work.

During the claimant's employment, he received several warnings for various issues involving poor job performance, attendance and inventory control. On August 22, 2008, the employer gave the claimant a final written warning. Prior to November 7, 2008, the employer did not note any problems with the claimant's language at work.

On October 23, the claimant became upset after the manager-on-duty had another employee announce over the loudspeaker at the end of the night that the claimant needed to dispose of cardboard he had left in an area. The claimant had been in the process of disposing the cardboard when he had been called back to his department. Instead of taking care of the cardboard immediately, he finished up some paperwork. The comment over the loudspeaker embarrassed the claimant and he was offended by it. Before the claimant went home he asked the manager-on-duty if he felt the claimant was F--- incompetent and didn't know his F--- job.

The claimant left work upset. Although Stienstra learned about the incident the next day, neither she nor anyone else in management talked to the claimant about the October 23 confrontation until November 7.

On November 7, the claimant confronted a friend and co-worker, Jake, about criticism the claimant received for ordering some parts. The claimant ordered the parts to the best of his ability and felt the employer criticized him for his efforts. The claimant told Jake that he wasn't going to f_____ order any more parts. A short time later, claimant told a female employee who was explaining the employer's procedure to him that he was not going to f_____ order any more parts.

The claimant's use of profanity at work on October 23 and November 7 violated the employer's code of conduct. Since the claimant had already received a final written warning, the employer discharged him on November 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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).

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. 871 IAC 24.32(8).

The October 23 incident cannot be considered a current act. Although the employer wanted to investigate this incident, the employer failed to warn the claimant that his conduct that night was inappropriate and that his job was in jeopardy as a result of the claimant's comment. If the employer had talked to the claimant immediately and warned him that his job was in jeopardy, it is highly unlikely he would have made the November 7 comment. Since the claimant took offense at a manager asking him to take care of some cardboard on October 23, the claimant's reaction was out-of-line. If the employer had talked to the claimant about this incident in a timely manner, the claimant's conduct on October 23 would constitute work-connected misconduct because he reacted unreasonably and was insubordinate to the manager on duty.

On November 7, the claimant's comment to his friend, while inappropriate and unnecessary does not rise to the level of work-connected misconduct. However, the claimant's use of profanity when talking to a female employee who was not a personal friend and was explaining the employer's procedures to him, amounts to work-connected misconduct. There was no reason for the claimant to use profanity while talking to the female employee. The claimant's conduct towards her amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. The fact the claimant did not remember he already received a final written warning does not excuse the use of profanity while talking to a co-worker. The employer discharged the claimant for reasons constituting work-connected misconduct.

DECISION:

The representative's December 1, 2008 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 9, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of whether the claimant has been overpaid or is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs