

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER J STEWART**  
Claimant

**APPEAL NO: 10A-UI-11411-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 07/04/10  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 2, 2010, reference 01, that held claimant was not discharged for misconduct on July 3, 2010, and benefits are allowed. A telephone hearing was held on September 30, 2010. The claimant participated. Elizabeth Mahr, HR Manager, and Ryan Meidick, Operations Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on April 23, 2008, and last worked for the employer as a full-time sales associate on July 3, 2010. The claimant received the employer attendance policy.

The claimant received a final warning for violation of the employer attendance policy on May 28, 2010. The claimant had six occurrences from December 2009, and the warning advised him that a further occurrence could result in termination.

The claimant suffers from anxiety and depression. The claimant was late to work on June 22, 25, and absent on June 29. The claimant sent a text message to his supervisor on June 29 that he would miss work due to his illness on that date. The claimant provided the employer a doctor's note that excused him from missing work. The employer discharged the claimant for excessive absenteeism/tardiness.

**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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 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 administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on July 3, 2010.

The most recent occurrences of claimant being late and absent are due to emotional health issues, and the claimant provided a doctor's excuse. While the claimant was excessively absent and/or late to work, the most recent occurrences are for excusable reasons and do not constitute job disqualifying misconduct.

**DECISION:**

The department decision dated August 2, 2010, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on July 3, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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