

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

ARNOLD L SMITH
6881 MAIN ST
MINGO IA 50168

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

Appeal Number: 06A-UI-06284-CT
OC: 05/28/06 R: 02
Claimant: Appellant (1)

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:

Arnold Smith filed an appeal from a representative's decision dated June 14, 2006, reference 01, which denied benefits based on his separation from Lowe's Home Centers, Inc. After due notice was issued, a hearing was held by telephone on July 12, 2006. Mr. Smith participated personally. The employer participated by Allison Lambert, Human Resources Manager; Joseph Adams, Sales Manager; and Greg Waters, Store Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Smith was employed by Lowe's from September

of 2004 until May 26, 2006 as a commercial sales loader. On May 25, 2006, Joseph Adams met with Mr. Smith to give him a written warning for misusing his employee discount card. When Mr. Adams requested that he return his discount card, Mr. Smith threw it at him and told him, "shove it up your ass." On May 26, he was discharged for verbal abuse.

The employer only intended to give Mr. Smith a written warning and revoke his discount card as a result of misusing the card. His verbal abuse of Mr. Adams was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Smith was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Smith was discharged after he threw his discount card at his manager and told him to shove it up his ass. His conduct was abusive and insubordinate. He knew or should have known that such conduct was contrary to the type of behavior the employer expected.

Whether Mr. Smith agreed with the warning and revocation of his discount card is immaterial. The fact remains that the employer had the right to expect that managers would be treated with respect and civility. Mr. Smith's actions on May 25 constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, it is concluded that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 14, 2006, reference 01, is hereby affirmed. Mr. Smith was discharged by Lowe's for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs