

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

MICHAEL TRAPHAGAN
4813 – 45TH AVE
MOLINE IL 61265

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

AMENDED

Appeal Number: 06O-UI-01147-JTT
OC: 10/23/05 R: 12
Claimant: Respondent (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
Section 96.6(2) – Rule Regarding Affirmed Decisions

STATEMENT OF THE CASE:

Lowe's Home Centers filed a timely appeal from the November 8, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 15, 2006. District Loss Prevention Manager Shon Rolfe represented the employer. Claimant Michael Traphagan participated. Exhibits One through Four were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Traphagan was employed at Lowe's Home Centers as a full-time "zone" or assistant manager from May 4, 2002, until October 24, 2005, when Regional Human Resources Director

Wayne Crowley discharged him. As part of his duties, Mr. Traphagan directly supervised the electrical department.

The final incident that prompted the discharge came to the attention of Lowe's management on October 17, when a clerk reported a violation of Lowe's policy. On October 14, the electrical department manager told Mr. Traphagan that the electrical department had an excessive amount of clearance items on hand. Mr. Traphagan contacted the receiving manager and asked her to do what she could to return the goods to the manufacturer or vendor for a credit obtained. Lowe's has a Return to Manufacturer clerk (RTM), but Mr. Traphagan bypassed that person and contacted the receiving manager instead. The receiving manager had previously been an RTM clerk, and Mr. Traphagan knew she would be willing to bend or break Lowe's policies to obtain credit from vendors. Lowe's corporate office had issued instructions to further mark down the items in question and sell them. The instructions from the corporate office were sent via the employer's electronic message system (EMS). Mr. Traphagan was supposed to check his EMS messages daily for directives. Mr. Traphagan was aware that the merchandise was to be marked down and sold, not returned for credit, but did not want to perform the necessary work to further discount the merchandise. Mr. Traphagan told the receiving manager that this was his purpose in seeking the returns for credit. The receiving manager followed up on Mr. Traphagan's directive by processing 79 separate small returns for one vendor to avoid provoking the vendor's suspicion about the requests for credit. This was fraud on the vendor and violated Lowe's policies regarding ethical conduct. The receiving manager then threw away some or all of the merchandise in question.

District Loss Prevention Manager Shon Rolfe commenced an investigation on October 17 and obtained written statements from the receiving manager and the Return to Manufacturer clerk the same day. Mr. Rolfe completed his investigation on October 24 by interviewing Mr. Traphagan. Mr. Traphagan indicated at that time that he knew the items were to be marked down and sold, but denied instructing the receiving clerk to violate Lowe's policy.

Mr. Traphagan established a claim that was effective October 23, 2005, and has received benefits of \$3,173.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Traphagan was discharged for misconduct in connection with the employment. It does.

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. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Mr. Traphagan intentionally violated Lowe's policies regarding markdown and sale of merchandise, regarding obtaining credits from vendors, and regarding ethical practices. Mr. Traphagan's intentional and unethical behavior exposed Lowe's to liability to a vendor for fraud or government sanction. Mr. Traphagan's behavior was substantial misconduct. Even if the administrative law judge found Mr. Traphagan's behavior to be the result of negligence and/or carelessness, the evidence indicates that Mr. Traphagan was negligent and/or careless several times in connection with the return of merchandise. Such negligence and/or carelessness would amount to misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Traphagan was discharged for misconduct. Accordingly, Mr. Traphagan is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Traphagan.

If the administrative law judge affirms a decision of the representative, or the appeal board affirms the decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid, and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding Iowa Code section 96.8(5). Iowa Code section 96.6(2). Based on this code provision, the administrative law judge hereby amends the decision entered February 24, 2006 to indicate that the claimant has not been overpaid benefits and is not subject to repayment of benefits totaling \$3,173.00, as was indicated in the February 24, 2006, decision.

DECISION:

The Agency representative's decision dated November 8, 2005, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The administrative law judge's decision dated February 24, 2006, is amended to indicate that the claimant is not overpaid \$3,173.00.

jt/kjw/kjw