

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KURTIS A HAYES**

Claimant

**APPEAL NO. 09A-UI-17453-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOME DEPOT USA INC**

Employer

**Original Claim: 12/7/08  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kurtis Hayes (claimant) appealed a representative's November 17, 2009 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Home Depot USA (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 29, 2009. The claimant participated personally. The employer was represented by Melissa Palmer, Human Resources Manager, and participated by Colleen Etheridge, Specialty Assistant Store Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 18, 2009, as a full-time sales associate. The claimant signed for receipt of the employer's Asset Protection Reference Guide on March 18, 2009. The claimant does not remember the employer allowing him to keep the Guide. The employer did not issue the claimant any warnings during his employment.

On October 26, 2009, the claimant climbed a ladder to help a customer. He stepped off the ladder onto the racking at approximately thirteen feet in the air. The employer has a rule that states an employee may not climb on the racks over six feet in the air. The employer terminated the claimant on October 26, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant disregarded the employer's right by failing to follow the employer's instructions on one occasion. The employer did not provide any evidence of wrongful intent or deliberate disregard at the hearing. This was a singular careless mistake. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's November 17, 2009 decision (reference 04) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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