

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOFIA QUEPONS

Claimant

APPEAL NO. 09A-UI-07028-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC

Employer

OC: 04/12/09

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 4, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing began on June 2, 2009 and concluded on June 18, 2009. Claimant participated with Jasmine Munoz, claimant's daughter; and Joe Weber, claimant's boyfriend (June 2 only but did not offer testimony), and was represented by Elizabeth Norris, Attorney at Law. Employer participated through Sue Ramirez, Store Manager, and Katy Dahl, Human Resources Manager.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a receiving clerk and was separated on April 8, 2009. On April 6 Associate Heather Koster reported to Ramirez she was talking to Joe Weber, claimant's boyfriend, asking for help moving pallets and claimant allegedly approached and used a threatening tone with her telling her to stay away. Claimant only advised Koster she was supposed to talk to others solely about business related matters. Koster replied, "I can talk to anyone I want to, honey" and walked away. Another associate Carrie Downer was present and asked claimant if she was okay. Claimant replied, "I'm okay, I just feel like kicking someone's booty." This is a phrase claimant has used in the past to indicate celebration of accomplishment: "We kicked some booty." In this circumstance she made the statement in frustration because of management's inaction after she had complained to Ramirez about employees calling her "cleaning lady" and Koster filing false complaints about her and spreading rumors about Weber and her that resulted in a chain reaction of at least two male employees making sexual suggestions to her. Munoz assisted her mother in drafting written complaints, which she gave to Ramirez in August 2008 and October 2008 just prior to warnings about "uncooperative behavior." Ramirez denied knowledge of the complaints but had told claimant Koster could speak with Weber and others about business matters and told her to forget about it and she would be fired if there was one more complaint.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct

for which claimant was discharged was merely an isolated incident of poor judgment and was not an expression of violence but of frustration with employer not addressing complaints about Koster's ongoing harassment and spreading rumors and two male employees' sexual harassment about those rumors. Employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 4, 2009, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending April 18, 2009 shall be paid to claimant forthwith.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs