

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY J WOLHOY**  
Claimant

**APPEAL NO: 11A-UI-14213-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 04/17/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 20, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Pat Leppart, a human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 9, 2011. The employer hired the claimant to work as a full-time head cashier. The employer's attendance policy informs employees the employer's progressive discipline starts after they have accumulated six unexcused attendance points. The claimant accumulated six attendance points before her probationary period ended.

After the claimant accumulated nine attendance points she received a written warning for ongoing attendance issues on August 20. The claimant had three more attendance issues and received a final written warning on August 29, 2011. The claimant gave the employer doctors' statements for the absences she had for medical reasons before August 29.

The claimant did not call or report to work on August 30. On September 1, the employer learned the claimant had car issues the day before. On September 15, the claimant was 15 minutes late for work. The claimant lives an hour from work and that day she had to drive in fog. Even though the claimant left her residence 90 minutes before she was scheduled to work, the fog was so dense she was 15 minutes late for work. On September 26, the claimant received a phone call that her fiancé had been injured and was at the hospital. The claimant asked a manager if she could leave work early if an employee would cover for her. The employer found someone to cover for the claimant's job and encouraged her to go to the

hospital to be with her fiancé. The claimant had no understanding the employer would consider leaving work early on September 26 as an attendance occurrence. On September 27, the claimant was 17 minutes late because she again had to drive in fog to get to work.

On October 2, the claimant overslept. She notified the employer she would be late for work. In an attempt to get to work on time, the claimant drove over the speed limit. When a law enforcement official stopped her for speeding, it was discovered she did not have a driver's license. She was then arrested and taken to jail. The claimant was unable to contact the employer and let anyone know she would not be at work.

The morning of October 3, the claimant called and talked to the store manager. She understood her job was in jeopardy and asked him if she still had a job. After she told the store manager what had happened the day before, he had no knowledge about her attendance issues and told her report to work. The claimant worked as scheduled on October 3 and 4.

The employer intended to discharge the claimant on October 4, but did not when management became involved with interviews. On October 5, the claimant called the employer. The employer then told her she was discharged for violating the employer's attendance policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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. 871 IAC 24.32(8).

The employer established justifiable business reasons for discharging the claimant. If the employer had discharged her on September 1 when she had not called or reported to work on August 30, the employer may have established work-connected misconduct. The claimant's most recent attendance issues were the result of weather – fog, leaving work early on September 26 after learning her fiancé had been injured and was in the hospital and oversleeping. The claimant assumed that when she did not report to work on October 2, she would be discharged and called before her shift on October 3. These absences do not establish that the claimant intentionally disregarded the employer's interests. The claimant tried to take steps to get to work on time by leaving 90 minutes before she was scheduled to work. Since she knew the weather and road conditions could change a great deal between her residence and work, she had a friend advise her when there were adverse driving conditions, such as fog. On September 26, the claimant would have stayed and finished her shift if the employer had told her she was placing her job in jeopardy if she left work early. There is no indication the claimant overslept before October 2. She did not have a habit of oversleeping. As soon as she woke up, she called the employer to let the store know she would be late. Even though the claimant made the decision to speed, she had not planned on being arrested and taken to jail. The claimant's most recent absences do not rise to the level of work-connected misconduct. As of October 2, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 20, 2011 determination (reference 03) is affirmed. The employer established justifiable business reasons for discharging the claimant. She violated the employer's attendance policy but, her recent absences do not amount to work-connected misconduct. As of October 2, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs