

3-12-2015

# Copper v. Ace Hardware Clerk's Record Dckt. 42873

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**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

CLARENCE L. COPPER,  
SSN: [REDACTED]

Claimant,

v.

ACE HARDWARE / SANNAN, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**SUPREME COURT NO. 42873**

**AGENCY RECORD**

---

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

**For Claimant/Appellant**

CLARENCE L COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

**For Employer/Respondent**

ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877

**For Respondent**

TRACEY K ROLFSEN  
DEPUTY ATTORNEY GENERAL  
317 W MAIN STREET  
BOISE ID 83735

**AGENCY RECORD – CLARENCE L. COPPER**

## TABLE OF CONTENTS

LIST OF EXHIBITS.....	i
DECISION OF APPEALS EXAMINER mailed date 08/18/2014.....	1
APPEAL’S EXAMINER’S NOTES .....	7
EMPLOYER’S NOTICE OF APPEAL file date 09/02/2014 .....	8
COMMISSION NOTICE OF FILING OF APPEAL file date 09/12/2014.....	10
IDAHO DEPARTMENT OF LABOR NOTICE OF APPEARANCE file date 09/23/2014 .....	12
COMMISSION DECISION AND ORDER file date 12/22/2014.....	14
CLAIMANT’S SUPREME COURT APPEAL file date 01/14/2015.....	23
COMMISSION CERTIFICATE OF APPEAL dated 01/22/2015 .....	25
CERTIFICATION dated 01/22/2015 .....	27
CERTIFICATION OF RECORD dated .....	28
COMMISSION NOTICE OF COMPLETION file date .....	29

## INDEX

APPEAL'S EXAMINER'S NOTES .....	7
CERTIFICATION dated 01/22/2015 .....	27
CERTIFICATION OF RECORD dated .....	28
CLAIMANT'S SUPREME COURT APPEAL file date 01/14/2015.....	23
COMMISSION CERTIFICATE OF APPEAL dated 01/22/2015 .....	25
COMMISSION DECISION AND ORDER file date 12/22/2014.....	14
COMMISSION NOTICE OF COMPLETION file date .....	29
COMMISSION NOTICE OF FILING OF APPEAL file date 09/12/2014.....	10
DECISION OF APPEALS EXAMINER mailed date 08/18/2014.....	1
EMPLOYER'S NOTICE OF APPEAL file date 09/02/2014 .....	8
IDAHO DEPARTMENT OF LABOR NOTICE OF APPEARANCE file date 09/23/2014 .....	12
LIST OF EXHIBITS.....	i

**LIST OF EXHIBITS**

HEARING TRANSCRIPT taken on 08/18/14 will be lodged with the Supreme Court.

**EXHIBITS ADMITTED into record before IDAHO DEPARTMENT OF LABOR**

.....Notice of Telephone Hearing, mailed August 7, 2014 (pp. 1 - 3)

Exhibit:

.....Important Information About Your Hearing Read Carefully (pp. 1 - 2)

.....Idaho Department of Labor Issue Script (pp. 3 - 7)

.....IDOL Employer Notification Unemployment Insurance Claim Filed (p. 8)

.....Employee Handbook Excerpts (pp. 9 - 10)

.....Receipt for Employee Handbook (p. 11)

.....Employee Receipt for Merchandise (p. 12)

.....Statement of Counseling Form, dated 7/1/14 (p. 13)

.....Statement of Counseling Form, dated 6/17/14 and 6/24/14 (p. 14 - 15)

.....Statement of Counseling Form, dated 6/7/14 (p. 16)

.....Coaching Worksheet (pp. 17 – 19)

.....Statement of Counseling Form, date 4/4/14 (p. 20)

.....Employer Notes (p. 21)

.....Eligibility Determination Unemployment Insurance Claim (pp. 22 – 23)

.....Employer’s Correspondence (pp. 24 – 26)

.....IDOL Employers Data (p. 27)

APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

CLARENCE L COPPER,  
SSN: [REDACTED]  
Claimant

vs.

ACE HARDWARE / SANNAN INC,  
Employer

and

IDAHO DEPARTMENT OF LABOR

**DOCKET NUMBER 5987-2014**

**DECISION OF APPEALS EXAMINER**

**DECISION**

Benefits are **ALLOWED** effective June 29, 2014. The claimant was not discharged for misconduct in connection with employment, as defined by § 72 1366(5) of the Idaho Employment Security Law.

The employer's account is **CHARGEABLE** for experience rating purposes, as defined by § 72-1351(2)(a) of the Idaho Employment Security Law.

The Eligibility Determination dated July 28, 2014 is hereby **AFFIRMED**.

**HISTORY OF THE CASE**

The employer filed a timely protest of the Eligibility Determination that found that claimant had been discharged from employment but not for misconduct. The above-entitled matter was heard by Mark Richmond, Appeals Examiner of the Idaho Department of Labor, on August 18, 2014, by telephone in the City of Boise, in accordance with §72-1368 (6) of the Idaho Employment Security Law.

The claimant, Clarence L. Copper appeared and testified. No other witnesses appeared on claimant's behalf.

The employer, Ace Hardware / Sannan Inc appeared. Appearing on Employer's behalf and providing testimony:  
Edward Delcomte

The Idaho Department of Labor did not participate in the hearing.

Exhibits 1 through 27 were entered into and made a part of the record at the hearing without objection.

## ISSUES

The issues before the Appeals Examiner are as follows:

1. Whether unemployment is due to the claimant being discharged and, if so, whether for misconduct in connection with the employment, according to § 72 1366(5) of the Idaho Employment Security Law; and
2. Whether the employer's account is properly chargeable for experience rating purposes for benefits paid to the claimant, according to § 72-1351(2)(a) of the Idaho Employment Security Law.

## FINDINGS OF FACT

**Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence.** Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant was hired on March 5, 2004.
2. The claimant was discharged from his position as an associate on July 1, 2014.
3. The employer stated the claimant was discharged for misusing the employee merchandise discount.
4. The employer stated that while on the clock the claimant allowed his father to purchase and pay for product using the claimant's associate discount.
5. The employer stated this is a violation of the employee discount policy.
6. The employer added the claimant was aware of the policy.
7. The claimant stated he did not violate the policy because his father resides with him and is therefore an immediate family member.
8. The claimant added that associates are allowed to purchase items while on the clock.
9. In the first four of the five calendar quarters preceding the one in which the claimant applied for benefits, this employer paid the claimant more wages than any other employer.

## AUTHORITY

Section 72 1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided unemployment is not due to the fact that the claimant left employment voluntarily without good cause, or was discharged for misconduct in connection with employment.

Section 72-1351(2)(a) of the Idaho Employment Security Law provides in part that for experience rating purposes, no charge shall be made to the account of such covered employer with respect to benefits paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services.

An employer may discharge an employee for any reason. However, only a discharge that is found to constitute misconduct for unemployment insurance purposes makes an employee ineligible for benefits. The employer must carry the burden of proving that the employee was discharged for employment related misconduct. *Parker vs. St. Maries Plywood*, 101 Idaho 415, 614 P.2d 955 (1980).

Misconduct within the meaning of an unemployment compensation act excluding from its benefit an employee discharged for misconduct must be an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. *Rasmussen vs. Employment Security Agency*, 83 Idaho 198, 360 P.2d 90 (1961).

In *Big Butte Ranch, Inc. vs. Grasmick*, 91 Idaho 6, 415 P.2d 48, (1966), the Idaho Supreme Court held that "preponderance of evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability of truth lies therein. *Accord Cook vs. WesternField Seeds, Inc.*, at Idaho 675, 681, 429 P.2d 407, 413 (1967).

If a party has the burden of proof by a preponderance of the evidence and the evidence presented weighs evenly on both sides, the finder of fact must resolve the question against the party having the burden of proof. *Atlantic and Pacific Insurance Company vs. Barnes*, 666 P.2d 163 (1983).

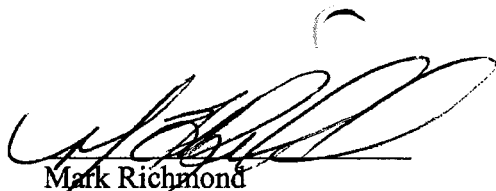
While an employer may make almost any kind of rule for the conduct of his employees and under some circumstances may be able to discharge an employee for violation of any rule, such does not, per se, amount to 'misconduct' constituting a bar to unemployment compensation benefits. *Wroble vs. Bonners Ferry Ranger Station*, 97, Idaho 900, 556 P.2d 859 (1976).

### CONCLUSIONS

Although an employer may discharge an employee for any reason, the employer carries the burden of illustrating by a preponderance of the evidence that the employee was discharged for employment related misconduct before a claimant can be denied unemployment insurance benefits. The Idaho Supreme Court has defined misconduct as a willful, intentional disregard of the employer's interest, a deliberate violation of the employer's rules, or a disregard from the standard of behavior which the employer has a right to expect or negligence in such a degree as to manifest culpability, wrongful intent, or evil design. A "preponderance of the evidence" is evidence that, when weighed with that opposed to it, has more convincing force and from which results a greater probability of truth. If the evidence weighs evenly on both sides, the issue must be decided against the party bearing the burden of proof.

After reviewing the record, the Appeals Examiner finds the employer has failed to meet this burden. Although it may have been in the best interest of the employer to discharge the claimant, the Appeals Examiner concludes that the claimant was not discharged for misconduct in connection with employment and is eligible for benefits. The employer's account will be held chargeable for experience rating purposes.





Mark Richmond  
Appeals Examiner  
Examinador de Apelaciones

**Date of Mailing**      August 18, 2014  
**Fecha De Envío**

**Last Day To Appeal**      September 2, 2014  
**Último Día Para Apelar**

### APPEAL RIGHTS

You have FOURTEEN (14) DAYS FROM THE DATE OF MAILING to file a written appeal with the Idaho Industrial Commission. The appeal must be taken or mailed to:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

In person:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise Idaho 83712

Or transmitted by facsimile to (208) 332-7558 Attn: IDOL Appeals.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or an Idaho Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

### DERECHOS DE APELACIÓN

Usted tiene CATORCE (14) DIAS DESDE LA FECHA DE ENVIO para archivar una apelación escrita con la Comisión Industrial de Idaho. La apelación debe ser llevada o enviada a:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

In person: Idaho Industrial Commission  
700 S Clearwater Lane  
Boise Idaho 83712

Or transmitted by facsimile to (208) 332-7558 Attn: IDOL Appeals.

Si la apelación es enviada por correo, la fecha en el sello del correo debe ser no más tarde de la fecha del último día en que puede apelar. Una apelación tardada será descartada. Apelaciones archivadas con la Agencia de Apelaciones o con la Oficina de Empleo no serán aceptadas por la Comisión. Una apelación archivada por medio de fax debe ser recibida por la comisión no mas tarde de las 5:00 P.M. Hora Standard de la Montaña, del último día en que puede apelar. Una transmisión de fax recibida después de las 5:00 P.M. se considerará recibida por la comisión, hasta el próximo día hábil. **EMPLEADORES QUE SON INCORPORADOS:** *Si una apelación es archivada en la Comisión Industrial de Idaho, la apelación tiene que ser firmada por un oficial o representante designado y la firma debe incluir el título del individuo. Si solicita una audiencia ante la Comisión Industrial, o permiso para archivar un escrito legal, ésta solicitud se debera de hacer por medio de un abogado con licencia para practicar en el estado de Idaho. Preguntas deben ser dirigidas a la Comisión Industrial de Idaho, Unemployment Appeals, (208) 334-6024.*

Si ninguna apelación se archiva, esta decisión será la final y no podrá cambiarse. **AL RECLAMANTE:** Si esta decisión se cambia, todos los beneficios pagados estarán sujetos a reembolso. Si una apelación se archiva, usted debería de continuar reportando en su reclamo mientras esté desempleado.

APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

**CERTIFICATE OF SERVICE**

I hereby certify that on AUG 18 2014, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877-

CLARENCE L COPPER  
352 ECHO DRIVE  
POST FALLS ID 83854-

  
\_\_\_\_\_

The request failed with HTTP status 401: Unauthorized.

Quick Load  
 Docket Number:  Year: 2014 Higher Court: Appeal Source: UI - Basis Load

Appeal Information Edit

Docket Number: 5987 Year: 2014 Name: COPPER, CLARENCE L

Court Level: Appeal Date Filed: 08/04/2014 Due Out Date: 09/01/2014

Appellant: Employer Program: REG - UI Related To Dockets:

Status: Scheduled Local Office: 0090 - Kootenai County Job Service

Multiple Appeals:  Tax Due: \$0.00 Penalty: \$0.00 Interest: \$0.00

Tax Rep Name:

Setup By: csalisbu Setup Date: 08/05/2014

Scheduled By: mrichmon Scheduled Set On: 08/18/2014

Participants Add

Type	Name	Address	City	State	Zip	Phone	Fax Phone
Claimant	COPPER, CLARENCE L	3525 w echo dr	post falls	ID	83854	(208) 691-0216	
Employer	ACE HARDWARE / SANNAN INC	PO BOX 1478	POST FALLS	ID	83877	(208) 773-5341	

Issues Maintain Issues

Issue ID	Level	Sequence	Primary	Issue	Status	Determination	Decision	Resolution
020		0	Primary	Discharge	Allow	Allow	Affirmed	020
021		0		Chargeability	Chargeable	Chargeable	Affirmed	021

Schedule Information Add

Examiner	Date	Start	End	MeetingID	Status
Mark Richmond	Aug 18, 2014	9:00 AM	10:00 AM	8960127	Past

Notes Print All Notes Add

Note	UpdatedBy	LastUpdated
IC PROTEST RECEIVED; PROCESSED AS NEEDED.	DOE\egloecd	9/8/2014 7:56:32 AM

Documents

Add Document NTH Dismissal Select a Document to Build... Ones AX UI Tasks



**Seright's Ace Hardware**

P.O. Box 1478  
Post Falls, ID 83877  
www.serightsace.com

Ph. (208) 773-1581  
Fax (208) 773-5956

September 2, 2014

Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735-0720

Attn: IDOL Appeals

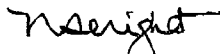
Re: [REDACTED] Clarence Copper

We are in receipt of the eligibility determination claim for Clarence Copper stating he is eligible for benefits and we wish to protest this action.

Our Employee Handbook clearly states "only the employee can make the purchase" and "all purchases must be made on your own time". Please see attached page.

What is the point in having policies if employees are not held accountable for misconduct?

Sincerely,

  
Nancy Seright  
Owner

**FILED**

SEP - 2 2014

INDUSTRIAL COMMISSION

5987-2014

Locations: Seright's Ace Hardware • 1604 E. Sellloe Way • Post Falls, ID 83854 • (208) 773-1581  
Seright's Ace on 4<sup>th</sup> • 1217 N. 4<sup>th</sup> Street • Coeur d'Alene, ID 83814 • (208) 667-9466

Total Leave(s) of Absence time away from work for non-work related medical reasons, in excess of 3 weeks during the calendar year will reduce an Employee's vacation benefit for the following calendar year, on a pro rata basis.

We do not pay vacation pay upon termination, whether the employee is terminated or whether the employee quits.

### Merchandise Discount

At the end of the probationary period, all Employees may purchase either from store inventory or directly from the Ace warehouse (non-stocked merchandise) at 20% above store cost. Please realize that this is a very generous benefit that you will not likely find at many other places of employment. Sale merchandise, coupon items, closeouts, and other marked-down items, will be sold at the Employee discount rate or sale price, whichever is less.

Employees will be expected to pay cash for an item .

Like any of our customers, if you order something that is not a regular stock item and decide not to buy it, you will have to pay any return freight charges or restocking fees to return it. Of course, you will be expected to use common sense regarding order multiples, when special ordering merchandise.

In order to receive the discount the following Employee purchase policy must be followed:

Only the Employee can make the purchase and you must have another employee ring up the purchase.

All purchases must be made on your own time. Employee purchases made during the day must be paid for and kept in the office until you leave the store.

Merchandise must be for the Employee's direct use, or that of only his/her immediate family (spouse and/or children) residing with Employee only. In the case of an Employee residing with his/her parent(s), immediate family will include the parent(s). *Clarence states his father was staying with him, his father resides out of state. Regardless Clarence is head of household.* Under no circumstances may you assemble purchases and put them away for recording at a later time or date.

Merchandise can never be purchased for resale.

All Employee purchases are to be recorded at the established price. Purchases may only be made on the Employee's off-duty time or at the end of their work shift. The sale must be recorded on a store invoice. Employees must never ring up their own purchase. The merchandise should be removed from the store once the sale transaction is complete. Cashiers are not permitted to ring up their own purchases or of any relative or person residing in their household under any circumstances. We suggest you advise family members of this fact to avoid any embarrassment at a later time.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of September, 2014 a true and correct copy of the **Notice of Filing of Appeal and compact disc of the Hearing** were served by regular United States mail upon the following:

**APPEAL:**

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

**APPEAL AND DISC:**

CLARENCE L COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877

kh

  
Assistant Commission Secretary

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CLARENCE L. COPPER,  
SSN: [REDACTED]

Claimant,

v.

ACE HARDWARE / SANNAN, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 5987-2014**

**NOTICE OF FILING  
OF APPEAL**

**FILED**

**SEP 12 2014**

**INDUSTRIAL COMMISSION**

**PLEASE TAKE NOTICE:** The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

**PLEASE READ ALL THE RULES CAREFULLY**

The Industrial Commission promptly processes all unemployment appeals in the order received. In the mean time, you may want to visit our web site for more information: [www.iic.idaho.gov](http://www.iic.idaho.gov).

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION  
UNEMPLOYMENT APPEALS DIVISION  
POST OFFICE BOX 83720  
BOISE IDAHO 83720-0041  
(208) 334-6024

*Calls Received by the Industrial Commission May Be Recorded*

**NOTICE OF FILING OF APPEAL - 1**



LAWRENCE G. WASDEN  
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431  
**TRACEY K. ROLFSEN – ISB# 4050**  
CHERYL GEORGE – ISB# 4213  
Deputy Attorneys General  
Idaho Department of Labor  
317 W. Main Street  
Boise, Idaho 83735  
Telephone: (208) 332-3570

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CLARENCE L. COPPER,	)	
	)	
Claimant,	)	
	)	IDOL NO. 5987-2014
vs.	)	
	)	
ACE HARDWARE/SANNAN, INC.,	)	NOTICE OF APPEARANCE
	)	
Employer,	)	
	)	
and	)	
	)	
IDAHO DEPARTMENT OF LABOR.	)	
_____	)	
	)	
	)	

**FILED**  
**SEP 23 2014**  
**INDUSTRIAL COMMISSION**

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 19<sup>th</sup> day of September, 2014.



Tracey K. Rolfsen  
Deputy Attorney General  
Attorney for the State of Idaho,  
Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 19<sup>th</sup> day of September, 2014 to:

CLARENCE L. COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

ACE HARDWARE/SANNAN, INC.  
PO BOX 1478  
POST FALLS ID 83877

Karen Rash

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CLARENCE L. COPPER,  
SSN: [REDACTED]

Claimant,

v.

ACE HARDWARE / SANNAN, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 5987-2014**

**DECISION AND ORDER**

**FILED**

**DEC 22 2014**

**INDUSTRIAL COMMISSION**

*Appeal of a Decision issued by an Idaho Department of Labor Appeals Examiner finding Claimant eligible for unemployment insurance benefits. REVERSED.*

Employer, Ace Hardware/Sannan, Inc., appeals a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”) granting Claimant, Clarence L. Copper, unemployment insurance benefits. The Appeals Examiner found that: 1) Employer discharged Claimant for reasons other than misconduct in connection with the employment; and 2) Employer’s account is chargeable for experience rating purposes. Claimant and Employer participated in the hearing. Due process was served.

Although the Commission has discretion to hold a new hearing, the record does not indicate that the interests of justice require one. Idaho Code §72-1368(7) (2014). Nor have any of the interested parties specifically requested a new hearing. A new hearing will not be held.

The undersigned Commissioners have conducted a *de novo* review of the record in accordance with Idaho Code § 72-1368(7). Spruell v. Allied Meadows Corp., 117 Idaho 277, 279, 787 P.2d 263, 265 (1990). The Commission has relied on the audio recording of the

hearing held by the Appeals Examiner on August 18, 2014, along with the Exhibit: [pp. 1 through 27] admitted into the evidentiary record during that proceeding.

### **FINDINGS OF FACT**

Based on the evidence in the record, the Commission sets forth the following Findings of Fact:

1. Claimant worked as an associate for Employer from March 5, 2004 until July 1, 2014.
2. Claimant had received a warning approximately a week prior to July 1, 2014, and knew that any further violation of Employer's policies would lead to his discharge.
3. Employer's employee discount policy provides "Only the Employee can make the purchase...All purchases must be made on your own time." It further states "Merchandise must be for the Employee's direct use, or that of only his/her immediate family (spouse and/or children) residing with Employee only. In the case of an Employee residing with his/her parent(s), immediate family will include the parents." Lastly, the policy warned that failure to follow the aforementioned provisions "will result in disciplinary action up to and including discharge."
4. On or about July 1, 2014, while he was on shift Claimant gave a cashier his discount code, which his father then used to purchase items.
5. Claimant's father lives with Claimant for three months out of the year and was doing so at the time he made the purchase in question.
6. Employer discharged Claimant for violating its employee discount policy. Specifically, for allowing another individual to make a purchase using his employee discount and the purchase was made while Claimant was "on the clock."
7. In the first four of the five calendar quarters preceding the one in which Claimant applied for benefits, Employer paid Claimant more wages than any other employer.

## DISCUSSION

### Discharge

Claimant worked for Employer as an associate. Employer allows employees to make discounted purchases for either themselves or an immediate family member. However, Employer's policy requires the purchase be made by the employee and done on the employee's time. On or about July 1, 2014, Claimant's father made a purchase using Claimant's discount while Claimant was working. Claimant was warned approximately a week prior that any violation of Employer's policies would lead to discharge. Claimant was subsequently discharged for violating Employer's policies. (Audio Recording.)

Idaho Code § 72-1366(5) provides, in part, that a claimant is eligible for unemployment insurance benefits if that individual was discharged for reasons other than employment-related misconduct. The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer. IDAPA 09.01.30.275.01 (2010); Appeals Examiner of Idaho Dept. of Labor v. J.R. Simplot Co., 131 Idaho 318, 320, 955 P.2d 1097, 1099 (1998). A "preponderance of the evidence" means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not. Edwards v. Independence Services, Inc., 140 Idaho 912, 915, 104 P.3d 954, 957 (2004). Benefits must be awarded to the claimant when the burden is not met. Mussman v. Kootenai County, 150 Idaho 68, 72, 244 P.3d 212, 216 (2010).

What constitutes "just cause" in the mind of an employer for dismissing an employee is not the legal equivalent of "misconduct" under Idaho's Employment Security Law. Therefore, whether the employer had reasonable grounds according to the employer's standards for dismissing a claimant is not controlling of the outcome in these cases. The Commission's only concern is whether the reasons for discharge constituted "misconduct" connected with the

## DECISION AND ORDER - 3

claimant's employment such that the claimant can be denied unemployment benefits. Beaty v. City of Idaho Falls, 110 Idaho 891, 892, 719 P.2d 1151, 1152 (1986).

The Idaho Supreme Court has defined misconduct as a willful, intentional disregard of the employer's interest; a deliberate violation of the employer's rules; or a disregard of standards of behavior which the employer has a right to expect of its employees. Gunter v. Magic Valley Regional Medical Center, 143 Idaho 63, 137 P.3d 450 (2006). In addition, the Court requires the Commission to consider all three grounds in determining whether misconduct exists. Smith v. Zero Defects, Inc., 132 Idaho 881, 884, 980 P.2d 545, 548 (1999). The Commission has reviewed all three definitions and finds that this case can be reviewed under the "standards of behavior" analysis without unnecessary explanation of the other two definitions.

Under the standards of behavior test, the employer must prove by a preponderance of the evidence that the claimant's conduct fell below the standard of behavior it expected and that the employer's expectation was objectively reasonable under the particular circumstances. Harris v. Electrical Wholesale, 141 Idaho 1, 105 P.3d 267 (2004). Further, the employer must communicate expectations and duties that do not naturally flow from the employment relationship. Pimley v. Best Values, Inc., 132 Idaho 432, 974 P.2d 78 (1999). Notably, there is no requirement that the employer must demonstrate that the employee's disregard of the employer's preferred standard of behavior was subjectively willful, intentional, or deliberate. Welch v. Cowles Publishing Co., 127 Idaho 361, 364, 900 P.2d 1372, 1375 (1995).

Employer discharged Claimant for violating its employee discount policy. (Audio Recording; Exhibit: p. 13.) The pertinent portion of the policy states "Only the Employee can make the purchase...All purchases must be made on your own time." The policy also provided "Merchandise must be for the Employee's direct use, or that of only his/her immediate family

(spouse and/or children) residing with Employee only. In the case of an Employee residing with his/her parent(s), immediate family will include the parents.” Lastly, the policy warned that failure to follow the aforementioned provisions “will result in disciplinary action up to and including discharge.” (Exhibit 10.) Claimant signed an acknowledgement of receipt of the employee handbook and affirmed that he read and understood Employer’s rules and policies. (Exhibit: p. 11.) Claimant also acknowledged that, approximately a week prior to July 1, 2014, he was warned that any further violation of Employer’s policy could lead to termination. (Audio Recording.) Therefore, Claimant was adequately aware of Employer’s expectation when using the employee discount and that failure to follow its policy could lead to discharge.

Employer’s policy is objectively reasonable under the circumstances. Employer offered employees discounts and had the discretion to set forth the terms and conditions of receiving the discount as it saw fit. Although Claimant asserts that Employer’s written policy was contrary to the common practice by employees and therefore, unreasonable, the record lacks sufficient evidence to support his assertion. (Audio Recording.) Claimant’s argument on that point is addressed in further detail below.

The event that led to Claimant’s situation is undisputed. While Claimant was working, he went to the cashier, gave the cashier his employee code for the discount and Claimant’s father purchased items using Claimant’s discount. (Audio Recording; Exhibit: p. 12.) Therefore, Claimant violated Employer’s policy by: 1) not paying for the items himself and 2) using his discount when he was working and not on his own time.

Claimant does not dispute that he knew Employer’s discount policy or that he violated the policy as it is written. He agrees that he was on the clock and did not personally make the purchase. However, Claimant asserts that Employer had previously condoned the conduct for

which he was discharged and it was common for an employee's immediate family to make purchases. (Audio Recording.)

It is undisputed that Claimant violated the black letter expectations set forth in Employer's written policy. Once an employer has met its burden of establishing misconduct in connection with employment, the burden then shifts to the claimant to show why the conduct did not constitute misconduct and that the claimant is subsequently entitled to benefits. See Ward v. Industrial Claim Appeals Office of State of Colo., 916 P.2d 605, 607-608 (1995); McKeesport Hosp. v. Unemployment Compensation Bd. Of Review, 155 Pa.Comwlth. 267, 270, 625 A.3d 112, 114 (1993); Unemployment Compensation Bd. Of Review v. Simone, 24 Pa.Cmwlth. 248, 250-251, 355 A.3d 614, 616 (1976). Employer has shown Claimant's conduct fell below its expectation. Consequently, the burden shifts to Claimant to justify his conduct.

Claimant asserts Employer's policy was not the common practice. The Idaho Supreme Court has stated "An employer's expectation, even if it flows naturally from the employment relationship, is not objectively reasonable if it is contrary to an established course of conduct." Adams v. Aspen Water, Inc., 150 Idaho 408, 414, 247 P.3d 635, 641 (2011), citing Davis v. Howard O. Miller Co., 107 Idaho 1092, 1095, 695 P.2d 1231, 1234 (1984). However, Claimant offered no other evidence to support his assertion that there was a course of conduct contrary to Employer's policy. Employer's witness, Edward Delcomte, did not comment on Claimant's assertion that other family members were allowed to purchase items, but Mr. Delcomte expressly disputed Claimant's assertion that employees were allowed to make purchases while on the clock. Mr. Delcomte asserted that employees made purchases while they were on their own time, such as on break. (Audio Recording.) In other words, Employer disputes Claimant's assertion that there was a common practice contrary to Employer's policy.



Both Claimant and Mr. Delcomte provided credible testimony. Mr. Delcomte disputes Claimant's assertion. There is no other evidence to support Claimant's assertion. Unfortunately, Claimant's mere assertion alone is insufficient to establish a contrary course of conduct.

Claimant also argued that it was permissible for his father to purchase the items because he is an immediate family member as defined by the policy. (Exhibit: pp. 5-6.) However, the provision regarding immediate family members is only relevant in terms of limiting the merchandise an employee can purchase. Specifically, Employer's policy reads "Merchandise must be for the Employee's direct use, or that of only his/her immediate family (spouse and/or children) residing with Employee only. In the case of an Employee residing with his/her parent(s), immediate family will include the parents." Employer does not take issue with whether the merchandise that was purchased qualified under its policy. Rather, Mr. Delcomte testified Claimant was discharged for the portions of the policy that require the purchase be made by the employee and on the employee's time. (Audio Recording.) Therefore, Claimant's argument regarding his father being an immediate family member is not relevant to the specific reasons for his discharge.

It is undisputed that Employer's expectation was communicated to Claimant through its policy and Claimant's conduct fell below that expectation. Claimant was provided a copy of Employer's policies, including the required procedures for obtaining the employee discount. He was further warned that violation of the policies would lead to discipline, including discharge. Claimant acknowledged that he did not make the purchase and the purchase was made while he was on the clock. However, Claimant argues that his conduct was justified because Employer allegedly allowed non-employees to make purchases using an employee's discount and permitted employees to make purchases while on the clock. Unfortunately, Claimant did not provide

sufficient evidence to support his contention and failed to show there was a contrary course of conduct to Employer's policy. Based on the evidence in this record, Claimant's conduct fell below the standard of behavior Employer expected. Employer discharged Claimant for misconduct in connection with the employment.

### **Chargeability**

Pursuant to Idaho Code § 72-1351(2)(a), an employer's experience rated account is chargeable for benefits paid to a claimant who is discharged for reasons other than misconduct connected with employment or quits with good cause connected with employment. In this case, Employer paid the most wages to Claimant during the last four base quarters. (Exhibit: p. 27.) Since Employer discharged Claimant for misconduct in connection with employment, Employer's account is not chargeable for experience rating purposes.

### **CONCLUSIONS OF LAW**

#### **I**

Employer discharged Claimant for misconduct in connection with employment.

#### **II**

Employer's account is not chargeable for experience rating purposes.

### **ORDER**

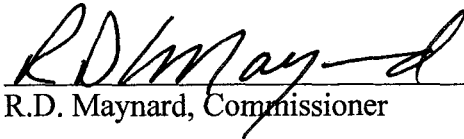
Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED. Employer discharged Claimant for misconduct in connection with employment. Employer's account is not chargeable for experience rating purposes. This is a final order under Idaho Code § 72-1368(7).

DATED this 22<sup>nd</sup> day of December 2014.

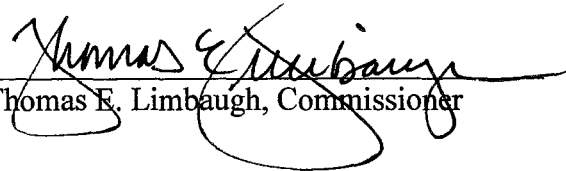
INDUSTRIAL COMMISSION



Thomas P. Baskin, Chairman



R.D. Maynard, Commissioner



Thomas E. Limbaugh, Commissioner

ATTEST:



  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of December 2014, a true and correct copy of Decision and Order was served by regular United States mail upon each of the following:

CLARENCE L COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
STATE HOUSE MAIL  
317 W MAIN STREET  
BOISE ID 83735

kh



**DECISION AND ORDER - 9**

January 7, 2015

Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735-0720

Attn: IDOL Appeals

Supreme Court No. 42873

RE: IDOL # 5987-2014 Decision & Order

I am in receipt of the Reversal Determination Order, in which I would wish to protest this action.

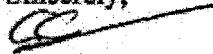
At this time I wish to state I've been employed in the state of Idaho for some 20 years. I have worked for two employers in that time in the same field of work. Ten years of that employment was at Ace Hardware/ Sannan, Inc. So I have an understanding of the Employee Handbook and Policies.

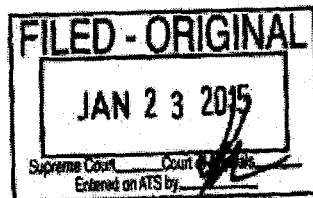
As for the so called misconduct, according to the Handbook an information that has been filed with the IDOL in the appeals process. In addition to my previous statements, I would like to add, on many occasions purchases are made in the manner as this so called misconduct. The head cashier at the time, Kathy Whitehead has rang in purchases like this on many occasions. General Manager Craig Jones has personally conducted these transactions for my purchases in the past. Even giving my employee discount to my father, while I was working on the clock. Supervisors Don Larson and Ken Rowe can account for these types of purchases also.

This so called misconduct, is, was, and has been the practice for the entire time of my employment for ten years. I have also witnessed, General Manager Ed Delcomte an Assistant Manger Boomer Tarman. Who both made the same types of purchases on the clock with in months or even days proceeding this misconduct. If I'm to be held accountable for misconduct, who do I the employee have to represent me when the employer has performed the same misconduct.

After reading my appeal, I sincerely hope the court can see through to find the truth in this matter. In which there are many ways to interrupt the handbook.

Sincerely,

  
Clarence Copper



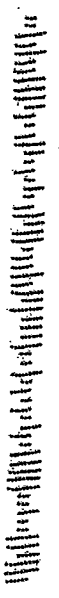
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2015 JAN 14 A 10:11

C. Copper  
3525 W Echo Dr.  
Post Falls ID. 83854

2015 JAN 14 A 10:11  
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INDUSTRIAL COMMISSION  
Unemployment Appeals  
P.O. Box 83720  
Boise Idaho 83720-0041



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RECEIVED  
IDAHO SUPREME COURT  
COURT OF APPEALS

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

2015 JAN 23 AM 9:16

CLARENCE L. COPPER,

Claimant-Appellant,

v.

ACE HARDWARE/SANNAN, INC.,  
Employer, and IDAHO DEPARTMENT OF  
LABOR,

Defendants-Respondents.

SUPREME COURT NO. 42873

**CERTIFICATE OF APPEAL  
OF CLARENCE L. COPPER**

**Appeal From:** Industrial Commission Chairman R.D. Maynard presiding.

**Case Number:** IDOL # 5987-2014

**Order Appealed from:** DECISION AND ORDER ENTERED DECEMBER 22, 2014

**Representative/Claimant:** CLARENCE L COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

**Representatives/Employers:** ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877

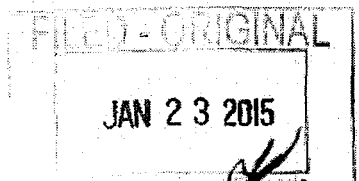
**Representative/IDOL:** TRACEY K ROLFSEN  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN ST  
BOISE ID 83735

**Appealed By:** CLARENCE L. COPPER, Claimant / Appellant

**Appealed Against:** ACE HARDARE / SANNAN, INC. / Respondent

**Notice of Appeal Filed:** January 14, 2015

**CERTIFICATE OF APPEAL OF CLARENCE L. COPPER - 1**



Appellate Fee Paid:

Awaiting Payment from Claimant.

Name of Reporter:

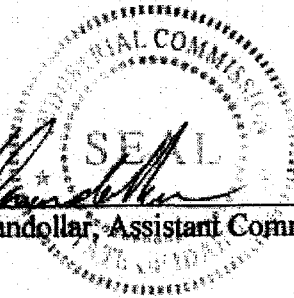
M DEAN WILLIS  
PO BOX 1241  
EAGLE ID 83616

Transcript:

Transcript will be ordered upon payment of fees.

Dated:

January 22, 2015



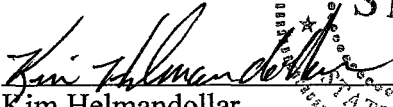
*Kim Helmandollar*  
\_\_\_\_\_  
Kim Helmandollar, Assistant Commission Secretary


**CERTIFICATE OF APPEAL OF CLARENCE L. COPPER - 2**

**CERTIFICATION**

I, Kim Helmandollar, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed September 12, 2014; Decision and Order filed December 22, 2014; and the whole thereof, Docket Number 5987-2014 for Clarence L. Copper.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 22<sup>nd</sup> day of January, 2015.

  
Kim Helmandollar  
Assistant Commission Secretary



**CERTIFICATION – CLARENCE L. COPPER**

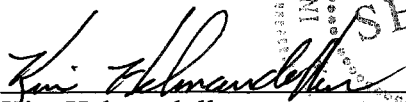


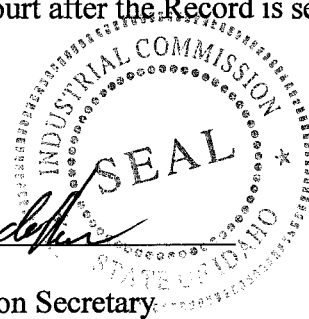
**CERTIFICATION OF RECORD**

I, Kim Helmandollar, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 12<sup>th</sup> day of March, 2015.

  
\_\_\_\_\_  
Kim Helmandollar  
Assistant Commission Secretary



**CERTIFICATION OF RECORD – CLARENCE L. COPPER**

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

CLARENCE L. COPPER,  
SSN: [REDACTED]

Claimant,

v.

ACE HARDWARE / SANNAN, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

SUPREME COURT NO. 42873

NOTICE OF COMPLETION

**TO:** Stephen W. Kenyon, Clerk of the Courts; and  
Clarence L. Copper, Claimant/Appellant; and  
Ace Hardware / Sannan, Inc., Employer/Respondent; and  
Tracey K. Rolfsen, Esq., for Idaho Department of Labor/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date, and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served by regular U.S. mail upon each of the following:

**Address For Claimant/Appellant**

CLARENCE L COPPER  
3525 W ECHO DR  
POST FALLS ID 83854

**Address For Employers/Respondents**

ACE HARDWARE / SANNAN INC  
PO BOX 1478  
POST FALLS ID 83877

**Address For Respondent**

TRACEY K ROLFSEN  
DEPUTY ATTORNEY GENERAL  
317 W MAIN STREET  
BOISE ID 83735

You are further notified that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have *twenty-eight days* from this date in which to file objections to the Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed *within the twenty-eight day period*, the Transcript and Record shall be deemed settled.

DATED at Boise, Idaho this 12<sup>th</sup> day of March, 2015.

INDUSTRIAL COMMISSION

  
Kim Helmandollar  
Assistant Commission Secretary

SEAL

