

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER H MC ADAM
Claimant

APPEAL NO: 11A-UI-06665-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/17/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 9, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Cameron McDaniel, the general manager, and Tyrone Jones, a second assistant general manager, testified on the employer's behalf. Paul Hammell, the employer's counsel, represented the employer. During the hearing Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 in November 2007. He worked full time as the department manager for cabinets and appliances. When the claimant started working, he received a copy of the employer's policies. One policy informed him that he could be disciplined if he used obscenities or abusive language. (Employer Exhibit Two.)

On January 29, 2011, a new employee became upset after she overheard the claimant say over the radio, "she doesn't know shit and I want Eric back over here." The new employee was upset because she had not been trained to help customers but wanted the training. (Employer Exhibit Three.) On February 11, 2011, the employer gave the claimant a written warning for making the unfavorable remark about a team member who was new and was being trained to work in the department. (Employer Exhibit Four.) Either before or after the February 11 written warning, the claimant talked to employee who made the complaint. The claimant explained to her that he had not meant to personally attack her. The two of them resolved the issue that made the new employee upset.

On April 13, Jones talked a customer who had special ordered a dryer and was picking it up. Later that evening, sometime after 9 p.m., this same customer came back to the store very

upset. He wanted to return the appliance. After the claimant was called to help the customer, he looked at the dryer and noticed it had a small dent in the front. He asked if the customer wanted a credit to compensate him for the dent. The customer was irate and only wanted to return the specially ordered dryer. The claimant wanted to get the customer out the door because he was yelling and very irate in the receiving area of the store. The claimant ultimately told the customer employees would take the dryer off his van and he could return the appliance.

The claimant called Jones on the headset and told him this customer was acting like a f_____ dickhead. Although Jones heard the customer make a comment, "Are you talking to me?" The customer was not close to the claimant. The claimant did not speak loudly to Jones and the customer was not close enough to hear anything the claimant said to Jones.

The next day, the customer called the employer to complain about the way he had been treated the night before and/or about problems he had with the specially ordered appliance. The employer concluded the customer overheard the claimant's comments to Jones. On April 14, the employer discharged the claimant for making a harassing comment about a customer who was standing behind him. (Employer Exhibit One.) The employer considered the claimant to have violated #6 in the employer general regulations. (Employer Exhibit Two.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer asserted the customer overheard the claimant's inappropriate comment when describing the customer's behavior to Jones. The employer came to this conclusion in part because Jones heard the customer in the background when he talked to the claimant and believed the customer asked the claimant if he was talking about him. The claimant, however, testified that the customer was not close enough to hear anything he said to Jones. Since Jones was not in the receiving area when the claimant called him and the claimant was the only person testifying who was in the receiving area at the time, the claimant's testimony that the customer was not behind him or close to and did not hear what he said to Jones must be given more weight than the employer's assertion. It is hard to believe that if the customer actually heard the claimant make this remark, he would have stayed and demanded to talk to the claimant's supervisor that night.

If the customer did not hear the claimant's comment, did the claimant commit work-connected misconduct by stating the words he used to describe this customer's conduct or behavior? Just two months earlier, the claimant received a written warning for what an employee perceived to be a negative comment about her. When the employer gave him the written warning on February 11, the employer talked to him about his phone etiquette. The warning does indicate the claimant's job was in jeopardy. Instead the warning states that further discipline would occur if the claimant made negative remark about an employee again. (Employer Exhibit Four.)

On April 13, the claimant was frustrated with the customer who was very irate and verbally abusive. The claimant's inappropriate comment to describe the customer in a private conversation with Jones is not condoned. This comment illustrates poor judgment, but does not amount to work-connected misconduct. Therefore, as of April 17, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's May 9, 2011 determination (reference 01) is reversed. The employer established justifiable business reasons for discharging the claimant, but these reasons do not constitute work-connected misconduct. As of April 17, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs