

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATCHES A RODRIGUEZ**

Claimant

**APPEAL NO: 08A-UI-03508-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**

Employer

**OC: 03/09/08 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Suspension or disciplinary layoff  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Menard, Inc. (employer) appealed a representative's April 1, 2008 decision (reference 01) that concluded Patches A. Rodriguez (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2008. The claimant participated in the hearing. Erik Fern, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Michael Thede. During the hearing, Employer's Exhibits One, Two, Three, and Five were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant suspended and discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 22, 2007. She worked part time (approximately 30 hours per week) as a cashier at the employer's Marshalltown, Iowa store. Her last day of work was March 10, 2008. The employer suspended her that day and discharged her on April 1, 2008. The stated reason for the suspension was for investigation of possible theft and the stated reason for the discharge was a conclusion of theft.

After the claimant's shift ended on March 7, 2008 her drawer was \$50.00 short. The employer reviewed the transactions on the drawer and the corresponding surveillance video in order to try to determine when and how the variance had occurred. That surveillance showed that at approximately 2:55 p.m. the claimant had opened the drawer, put her hands in the drawer, removed one hand from the drawer with something in the hand, moved that hand to her pocket, and then returned her hand up to the drawer with nothing in the hand. There had been no customer at the register for at least a minute or two prior to the claimant opening the drawer. The drawers are not to be opened without a sale without management approval. Due to the

employer's conclusion that the claimant had taken the money from the drawer, she was discharged.

The claimant established a claim for unemployment insurance benefits effective March 9, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$520.00.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra.

While the claimant denied taking the money, the employer has provided sufficient proof to establish by a preponderance of the evidence that the claimant did take the money. The claimant's theft of the money shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer suspended and discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's April 1, 2008 decision (reference 01) is reversed. The employer suspended and discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 9, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$520.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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