IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW J FEDDERS
Claimant

MENARD INC
Employer

APPEAL NO. 11A-UI-12145-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/14/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 9, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 10, 2011. Claimant participated. Employer participated through first assistant general manager Lawrence Youngberg and was represented by Paul Hammell, in house counsel. Employer's Exhibits 1 through 6 were admitted to the record. Whitney Wilson was not called as a witness.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an accounts service manager and was separated from employment on August 12, 2011. After a contractor report on August 9, 2011 that claimant had the employer's truck parked near his house, the employer pulled the GPS records of the truck and found he had stopped near his house on seven occasions between July 7 and August 11, 2011 (Employer's Exhibit 3) and did not account for that time. (Employer's Exhibit 4) On August 12 at the termination meeting he initially denied having stopped at his house because he saw the termination report on the top of the documents but he would have been discharged regardless of his response. When he rode along with his training manager, he was told they did not account for break times so he treated his stops at home as breaks. It was his impression that in the store they clocked out for breaks but people on the road did not. The employer considers all breaks as unpaid breaks. Senior team members set the example by not accounting for break stops on the road in the morning at Casey's to purchase food, but not gas for the employer's truck and one told claimant he uses a contractor working in his neighborhood as an excuse to stop at his home to pick up lunch or take a break. Others were not disciplined for similar conduct. He did not receive a copy of the general regulations (Employer's Exhibit 2, page 1) or handbook (Employer's Exhibit 5) and had not been warned his job was in jeopardy.

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).

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 related to inadequate training and poor management example and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it 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. An

employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Even though the claimant did unwittingly violate the policies, since the consequence was more severe than others received for the same offense, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The September 9, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs