

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L APPENZELLER
Claimant

MENARD INC
Employer

APPEAL NO: 11A-UI-15994-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed from department decisions dated December 12, 2011, reference 01 and reference 03, that held he was discharged for misconduct on November 15, 2011, and benefits are denied. A hearing was held on February 15, 2012. The claimant, and Attorney Jerry Jackson, participated. Paul Hammell, Legal Counsel; Andrew Steege, Assistant Manager; Roy Arp, Morning Stocker; and John McCoy, Stocker/Hardware department worker, participated for the employer. Official Notice was taken of the claimant requested, employer provided discovery documents. Employer Exhibit 1 was also received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time stocker on April 6, 2010, and last worked for the employer on November 15, 2011. The claimant received an employee handbook that contained the policies of the employer. The policy prohibits any acts of harassment or creating a hostile or offensive work environment. A violation may result in employment termination.

On the morning of November 11, manager Steege observed claimant and some other team member employees standing around, and called them in to discuss the need to be more productive. Steege had been watching these employees for more than one-half hour prior to calling them in. Although no one was disciplined, he did admonish the employees they needed to get to work.

Sometime later, claimant came around a corner in the hardware department, pointing his finger and looking at employees Arp and employee McCoy standing nearby stating “If I find out who snitched (or ratted) on me, I am going to kick his (fucking) ass”. There had been an earlier

incident where claimant had pushed a box against employee Arp that caused him to believe he was now being threatened. Employee McCoy felt he was assaulted and threatened.

The following day Arp reported the incident to manager Steege. Steege called in employees Arp and McCoy to investigate what had occurred, and he took statements. On November 15, Steege and an HR representative advised claimant he was discharged for violation of the employer Non-Harassment policy by threatening employees Arp and McCoy. A minor employer consideration for discharge was an employee complaint claimant in June 2011. Employer issued a written warning to claimant on June 17 for treatment of employees in the garden center. He was advised to stay out of the garden center.

Claimant admitted in this hearing that he stated in the presence of employees Arp and McCoy references to "back-stabbing cry babies," and somebody "should get their butt kicked or ass kicked."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 15, 2011, for a violation of company non-harassment policy that constitutes job disqualifying misconduct.

The employer offered credible witnesses that claimant made a threat to harm them on November 11, 2011. The claimant's act of pointing his finger with words of kicking their ass or butts is an assault that violates the employer non-harassment policy punishable by termination. The employer's minor consideration of a written warning to claimant for treatment of co-workers that restricted him from that department in June is consistent with the behavior he displayed for which he was discharged.

DECISION:

The department decision dated December 12, 2011, reference 01 and reference 03, is affirmed. The claimant was discharged for misconduct on November 15, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css