

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HANS J BOYSEN

Claimant

APPEAL NO. 100-UI-00314-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC

Employer

Original Claim: 08/23/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Menard, Inc. (employer) appealed a representative's September 17, 2009 decision (reference 01) that concluded Hans J. Boysen (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 February 17, 2010. The claimant participated in the hearing and was represented by James Sulhoff, attorney at law. Maureen Cosgrove, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Bob Rankin and Jason Binstock. During the hearing, Employer's Exhibits One through Ten 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 discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 14, 2008. He worked full-time as a shag driver/general laborer at the employer's Shelby, Iowa, distribution center. His last day of work was August 25, 2009. The employer sent him home that day and discharged him on August 26, 2009. The stated reason for the discharge was having too many accumulated safety violations.

On August 24 the claimant had hooked his truck tractor to a trailer to move it. The trailer brakes on a set of the tires failed to disengage. The claimant pulled the trailer about 100 feet, dragging the locked tires along the pavement, leaving about 100 feet of skid marks. Normal procedure would be that the driver should be checking the movement of the trailer in his rear view mirrors and making sure that the trailer brakes had released so the tires and trailer were properly rolling.

The claimant observed the problem after the 100 feet. He proceeded to move the trailer into its dock, observing when the tires locked and backing up and releasing the brakes as needed. He

did not report the incident. While the claimant did work on the second shift, the claimant indicated the incident occurred at approximately 7:30 p.m.; it was not established that there was insufficient light for him to have observed the tires on the trailer were locked before traveling the 100 feet; there was apparently sufficient light for him to see the problem after traveling the 100 feet.

The claimant had been given multiple prior warnings for safety issues and property damage, most recently on July 12, 2009. That warning stated that continued violations could result in termination of employment. The warning advised the claimant to “check his work.” The claimant also understood from prior warnings that he needed to “be more careful and watch closer at what I’m doing.”

As a result of the further incident on August 24, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective August 23, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has 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 discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated negligence and failure to take reasonable care, reoccurring on August 24 after prior warning, 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 discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's September 17, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 23, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw