IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-05126-BT
OC: 04/23/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brian Hanson (claimant) appealed an unemployment insurance decision dated May 9, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Menard, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 2006. The claimant participated in the hearing with Attorney Beth Hansen. The employer participated through Brian Sampson, General Manager and Landon Pelkola, General Counsel. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time contractor sales representative working in the commercial contractor's department from December 22, 2002 through April 21, 2006, when he was discharged for intentionally violating company policy. Employees are required to obtain a written signature before submitting an order for a special order contract. Once the signature is obtained, the purchase order becomes a binding contract. On April 19, 2006, the claimant submitted a special order contract for an amount of $5,188.81 based only on a customer's verbal agreement. The order was for non-custom made merchandise and was not kept in stock so had to be specifically ordered for this customer. Although the claimant was aware of the policy, he did not take the time to obtain the customer's signature because he had childcare issues that evening and was in a hurry to leave the store.

The customer subsequently cancelled the order because it cost more than he was originally promised by another Menard's employee. At that point, the claimant informed the employer of his actions which resulted in a non-binding contract. Customers are allowed to return non-custom-made special order merchandise with a 15 percent restocking fee. The employer could not obtain the restocking fee and had to sell the merchandise at a discount. Other employees sometimes submitted special order contracts without the customer's signature but the employer was not aware of it since there were no subsequent problems with the purchase. The claimant had previously received a written warning and a subsequent three-day suspension for failure to pay attention to detail when preparing special order contracts. This disciplinary action occurred in 2003 and no other warnings were issued subsequent to that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.
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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for intentionally violating a known policy because it was late and he wanted to leave work. He argues that the policy is violated by other employees and a former employee confirmed that fact, although the employee admitted he was never “caught” violating this policy. The former employee also refused to provide the names of any other employees who have reportedly violated the policy, as he did not want to cause anyone to be terminated. The evidence confirms it was not acceptable to violate the policy, even though some employees may have gotten away with it without the employer’s knowledge. The serious nature of the policy violation when balanced against the claimant’s reason for violating the policy, take it beyond a mere isolated incident or a good faith error in judgment or discretion. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 9, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/kkf