

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAYLEEN D BOMER**  
Claimant

**APPEAL NO. 08A-UI-03360-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 02/24/08 R: 01**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Menard, filed an appeal from a decision dated March 27, 2008, reference 02. The decision allowed benefits to the claimant, Kayleen Bomer. After due notice was issued a hearing was held by telephone conference call on April 21, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Plant Manager Nate Molstad. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Kayleen Bomer was employed by Menard, Inc., from September 10, 2007 until February 22, 2008, as a full-time production worker. At the time of hire she received a copy of the employer's drug-free workplace policy which sets out the provisions for random testing and informs employees of the drugs for which any sample would be tested.

On February 15, 2008, Ms. Bomer was informed she had been randomly selected for testing by an independent third party company whose computer software had generated her number. She was taken to the Mytrue hospital and gave a urine sample which was split and sent to ChoicePoint laboratory for analysis. On February 22, 2008, the claimant was notified by Plant Manager Nate Molstad she was to contact the medical review officer and he provided her with a telephone and a private area to call. After the phone call Ms. Bomer told Mr. Mostad the sample had come back positive for methamphetamine. She said she did not understand how that was possible because she had gone through rehabilitation five years before.

The claimant was discharged at that time for violation of the policy. On February 15, 2008, she was sent a certified letter notifying her of her right to have the split sample retested at a laboratory of her choice, the cost of the test, a form she could fill out to request the retest, that she had seven days from the date of the letter to make the request, and that she would be

reinstated with back pay if the confirmatory test came back negative. Ms. Bomer never contacted the drug program coordinator to have the split sample retested and the discharge was final as of February 22, 2008.

Kayleen Bomer has received unemployment benefits since filing a claim with an effective date of February 24, 2008.

#### **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 claimant was discharged for violation of a known company rule. The employer complied with the requirements of Iowa Code chapter 730.5 by notifying the claimant of the policy and the drugs for which any sample would be tested, the selection of the people to be tested, and then notifying Ms. Bomer of her rights for a retest. As the claimant did not participate she did not provide any explanation as to why the sample might have tested as a false positive and why she did not avail herself of the option to have the sample retested in order to restore her job. The record establishes the claimant was discharged for violation of the drug-free workplace policy which is conduct not in the best interests of the employer. Benefits are denied.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of March 27, 2008, reference 02, is reversed. Kayleen Bomer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,554.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs