

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD A SNYDER**  
Claimant

**APPEAL NO. 07A-UI-00548-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 12/10/06 R: 01  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 5, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A hearing was held on February 6, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Matt Novy participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as the manager of the floor covering and window treatment department from August 25, 1999, to November 13, 2006. The claimant was informed and understood that under the employer's work rules, removing merchandise from the store without paying for it was grounds for disciplinary action.

When vinyl rollup blinds are cut to the proper width in the store, there is a piece of scrap vinyl attached to a roll of cardboard left over. If the customer does not take the scrap piece of vinyl with them, the scrap piece is placed in the trash and is thrown away.

At the end of the day on November 12, 2006, the claimant took two 20-inch-wide scrap pieces of vinyl out the front door with him. His daughter had a birthday coming up and the claimant had thought of a way to make something with the scrap piece of vinyl. When the head cashier asked him if he had a receipt for the items, the claimant told her not to worry about it, it was something out of the trash. The claimant did not believe the items had any value because they were not saleable and would have ended up being taken out with the trash. The claimant made no attempt to conceal the items and his exit was recorded on the store surveillance system.

The head cashier reported that the claimant had taken something from the store without a receipt. When questioned by the general manager about the matter, the claimant admitted that

he had taken scrap material from the trash out of the store. The employer discharged the claimant on November 13, 2006, for unauthorized removal of company property.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The evidence establishes an isolated error in judgment. I believe the claimant's testimony that the scrap vinyl was never resold and always ended up in the trash. He should have touched base with a manager before leaving the store, but I do not believe he deliberately violated the employer's rule prohibiting taking merchandise from the store.

**DECISION:**

The unemployment insurance decision dated January 5, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css