

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS J BERTELSEN
Claimant

MENARD INC
Employer

APPEAL 20A-UI-10157-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the August 18, 2020 (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 7, 2020, at 2:00 p.m. Claimant participated. Employer participated through Aaron Schoening, Department Manager. Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time General Laborer from August 13, 2018 until his employment with Menard ended on July 8, 2020. Claimant worked Sunday through Wednesday from 5:00 a.m. until 3:30 p.m. Claimant's direct supervisor was Misty Worley, Assistant Department Manager.

Claimant took a medical leave of absence from work with employer's approval from May 27, 2020 until June 14, 2020. (Exhibit 1) The Leave of Absence Request/Approval Form states that "upon returning from Family/Medical Leave, I must provide certification from my health care provider that I am able to resume work." (Exhibit 1) Claimant signed the form. (Exhibit 1) Claimant returned to work on Sunday, June 14, 2020. Claimant worked Sunday, June 14, 2020 and Monday, June 15, 2020. On June 15, 2020, employer informed claimant that he needed to provide a release from his health care provider in order to return to work. Employer also told claimant that if he did not provide the document he could not continue employment with Menard. Claimant attempted to call the hospital but was unable to obtain a note from his health care provider. Claimant did not provide employer with a release from his health care provider.

On July 8, 2020, employer discharged claimant for failure to provide the release from his health care provider.

The administrative record reflects that claimant has not received unemployment insurance benefits, since his separation from employment on July 8, 2020. Employer has not established that it participated in the fact-finding interview or had good cause for not participating.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily

disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

Claimant requested and was granted a medical leave of absence. Claimant was notified at the time he made his request that a release to return to work would be necessary upon the expiration of the leave. Employer also requested the release and warned claimant that failure to provide the release may result in termination of employment. Employer's request for a release to return to work was reasonable. Claimant had three weeks to obtain a release after his leave expired but was unable to obtain a release. Claimant's only reason for not providing the release was that he tried to call the hospital but was unable to obtain the release. Claimant's failure to provide the release was not in good faith or for good cause. Claimant knew that failure to provide the release would result in termination of his employment. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

Because no benefits were paid to claimant after his separation, the issues of overpayment, repayment and chargeability are moot. Because claimant is not eligible for regular unemployment insurance benefits, claimant is also not eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The August 18, 2020 (reference 04) unemployment insurance decision is reversed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot. Claimant is not eligible for Federal Pandemic Unemployment Compensation.



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October 14, 2020
Decision Dated and Mailed

acw/scn