

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANGEL L DURAN
Claimant

APPEAL NO. 15R-UI-14251-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 09/20/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Menard Inc. filed a timely appeal from a representative's decision dated October 9, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was discharged from work on September 15, 2015 under non disqualifying conditions. After due notice, a telephone hearing was held on November 19, 2015. The employer participated. On November 20, 2015, an administrative law judge decision was entered finding that the employer had not filed a timely appeal and the administrative law judge therefore lacked jurisdiction to change the Agency representative's decision in the case. The employer filed an appeal with the Employment Appeal Board. On December 28, 2015 reversed the administrative law judge's decision and remanded it for a hearing on the merits finding that the employer's appeal should be considered timely because the Agency lost the employer's appeal paperwork. In compliance with that directive, notices of hearing were sent to the parties' last-known addresses of record for a telephone hearing to be held on January 21, 2016. Although duly notified, the claimant did not participate. The employer participated by Mr. Justin Taylor, Department Manager. Employer's Exhibits A through F were admitted into the hearing record.

ISSUE:

The issue is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Angel Duran was employed by Menard Inc. from June 17, 2014 until September 15, 2015 when he was discharged from employment. Mr. Duran was employed as a general laborer and was paid by the hour. His immediate supervisor was Justin Taylor.

Mr. Duran was discharged on September 15, 2015, for engaging in a physical altercation with another employee regarding a dispute about how to perform assigned work.

On that date, Mr. Duran aggressively approached a coworker, pushing the coworker and repeatedly poking the coworker in the chest with his finger in dispute about how the coworker was performing work. The claimant's conduct was observed by two company supervisors who were present in the area. Both supervisors, as well as the other worker, confirmed in their statements to the company that Mr. Duran was the aggressor and that Mr. Duran had placed his hands upon the coworker in an angry manner during the dispute.

The company's work regulations prohibit intimidation or threatening behavior towards other employees and provides that employees may be discharged on the first offense and also provides that the employer may press charges against the individual for acts of violence. Mr. Duran was aware of the policies as he had received a company handbook and had acknowledged that he had received and read the policies.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand the evidence in the record establishes that Mr. Duran was discharged after he was observed engaging in intimidating behavior and placing his hands on a coworker in violation of established company policy. The evidence establishes that Mr. Duran aggressively pushed the other worker and then repeatedly poked his finger in the other worker's chest and challenging the other worker to meet in the parking lot to fight. The evidence also showed that although a supervisor had attempted to intervene, Mr. Duran again pushed the coworker.

There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in an initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in an initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid unemployment insurance benefits in the amount of \$7327.00 for the 17-week period beginning September 26, 2015 through January 16, 2016. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The representative's decision dated October 9, 2015, reference 01, is reversed. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The claimant has been overpaid job insurance benefits in the amount of \$7327.00 and is liable to repay that amount. The employer's account will not be charged as the employer participated in the fact-finding interview.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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