

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA A JOHNSTON**  
Claimant

**APPEAL NO. 12A-UI-00329-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 12/04/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Christina A. Johnston filed a timely appeal from an unemployment insurance decision dated December 28, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held February 8, 2012 with General Manager Patrick Plaehn participating for the employer, Menard, Inc. Employer Exhibit One was admitted into evidence. Ms. Johnston did not respond to the hearing notice by providing a telephone number at which she could be contacted.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Christina A. Johnston was employed by Menard, Inc. from September 30, 2008 until she was discharged December 5, 2011. She last worked full time as a sales team member. She was discharged because of repeated tardiness and absences. On September 15, 2011 she was suspended for three days because of her attendance. By October 19, 2011, she had again accumulated sufficient attendance points due to tardiness to be eligible for discharge. General Manager Patrick Plaehn gave Ms. Johnston one last opportunity to correct the situation. Ms. Johnston was tardy again on November 27 and 28, 2011. These occurrences led to her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. 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.

Excessive, unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in the record establishes repeated instances of tardiness that continued even after a suspension and a final, last chance warning. This evidence is sufficient to establish misconduct. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated December 28, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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