

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA STUDER
Claimant

APPEAL NO: 12A-UI-05057-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/01/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Brenda Studer (claimant) appealed an unemployment insurance decision dated April 23, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Menard, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2012. The claimant participated in the hearing. The employer participated through Jason Slinker, First Assistant General Manager; Cynthia Stickel, Front End Manager; and Attorney Paul Hammell. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from October 12, 2010 through April 2, 2012 when she was discharged for fraudulently sending in customers' rebate requests. The employer's work policies require cashiers to ensure customers leave with their receipts but if a customer leaves a receipt behind, the cashier is required to "rip up the receipt in small pieces." If the front end manager or head cashier sees receipts that are left behind, they are required to "rip up the receipt in small pieces." Employees are not allowed to hold onto any receipts which are not their own. The evidence demonstrated that receipts might be initially retained in case the customer returns right away but they should be destroyed before the end of the cashier's shift. The employer's general regulations also prohibit theft, attempted theft, misuse or unauthorized removal from the premises of any company, employee or customer.

The employer was conducting an 11 percent promotional rebate on items purchased in February 2012. The corporate office notified the employer on April 2, 2012 that the claimant's activity had been suspicious since she had been sending in multiple rebate requests. She sent

in 42 separate rebate requests from April 3, 2012 through April 27, 2012 with amounts ranging from eight cents to \$100.00. The employer questioned the claimant about it and she admitted it but claimed that the customers had given her these receipts. The employer reviewed the surveillance tapes surrounding these receipts and recordings contradicted the claimant's explanation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 2, 2012 after it was discovered she had been using customer receipts to request rebates on products the customer purchased. Her explanation that she was given the receipts is not credible but even if that were the case, she was not entitled to that rebate money since she did not purchase the original products. Any reasonable person would know this conduct is unacceptable. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an

intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 23, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs