

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN M DENNEY
Claimant

APPEAL NO. 14A-UI-04469-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/06/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 23, 2014, reference 02, which denied unemployment insurance benefits finding that the claimant was discharged on April 3, 2014 under disqualifying conditions. After due notice was provided, a telephone hearing was held on May 20, 2014. The claimant participated. The employer participated by Paul Hammell, In-house counsel, Steven Carroll, General Manager and Megan Shade, Assistant Manager. Employer's Exhibits One, Two, Three, Four, Five and Six were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jean Denney was employed by Menard Inc. from February 21, 2013 until April 5, 2014 when she was discharged from employment.

Ms. Denney was discharged for failure to follow the company's cash handling policies after being warned.

Under the company's cash handling policy, cashiers are subject to discharge if they have repetitive cash register shortages or overages that exceed specified amounts within a rolling 12-month period. Ms. Denney was aware of the policy and had received numerous warnings from the employer prior to being discharged. The claimant was warned about drawer overages or shortages on June 10, 2013, January 9, 2014, January 16, 2014, January 24, 2014 and March 27, 2014.

Ms. Denney had been provided training and had demonstrated the ability to do the job at times but did not do so consistently.

It is the claimant's position that she did not intentionally provide the wrong change to customers but any mistakes may have been caused in part by psychological issues or inaccurate counting of the cash drawers by company management. The claimant further asserts that on one occasion the cause of the cash discrepancy was actually by another employee. Ms. Denney did not allege that the other employee had caused the cash register error until substantially after the incident had taken place.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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).

The employer has the burden of proof in this matter. 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 insurance 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 administrative law judge is convinced that Ms. Denney did not intentionally make cash handling mistakes that caused shortages or overages in her cash register drawer on a repeated basis. The evidence does establish that Ms. Denney was properly trained and had demonstrated the ability to do the job at times but did not do so on a consistent basis. Although the claimant was aware of the company's cash handling policy and had been repeatedly warned, Ms. Denney nevertheless continued to fail to properly make change for customer purchases even though the proper amount of change was on display on the cash register machine that she was operating. Based upon the number of infractions and warnings that had been served upon Ms. Denney, the administrative law judge concludes that the claimant's carelessness or negligence was of such a degree or reoccurrence so as to manifest culpability under the provisions of the Employment Security Law. The claimant did not allege or imply that another employee had made a cash register error that was attributed to the claimant, until substantially after the incident had taken place. Although the claimant maintains that her poor performance was due to a psychological issue, the claimant did not properly inform the employer of any medical or physiological issues that would prevent her from performing her job prior to her discharge from employment.

Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated April 23, 2014, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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