

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GEORGE O WIDMAN**  
Claimant

**MENARD INC**  
Employer

**APPEAL NO. 14A-UI-09733-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/24/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 11, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 8, 2014. Claimant participated personally. Employer participated by Paul Hammell, with witnesses Cameron McDaniel and Dan Newman. Employer's Exhibits One through Eight were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 7, 2014. Employer discharged claimant on August 7, 2014 because claimant had given a high-volume customer discounts on large purchases that were not approved by the store manager and put employer in a difficult situation by dwindling supplies through its distribution center.

Claimant had shown to his manager the amounts of product and potential calculation of prices for the units. Claimant's manager had asked claimant to do more investigation into when units were needed and how this would deplete the stores' and distribution center's supplies of the products ordered. Claimant signed that his manager had approved pricing and amounts. The client subsequently came to the store and ordered these products stating that they were needed immediately. (Subsequently the client was able to delay the receipt of a great deal of the lighting products). The client's order was well in excess of the approved amount.

## REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(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 for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). 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).

Unemployment benefits are not available to an individual who was discharged for misconduct in connection with his or her job. Iowa Code § 96.5(2). Courts have recognized a distinction between the word "misconduct" in labor law and "misconduct" as defined for unemployment compensation purposes. Misconduct serious enough to warrant an employer to fire an employee is not necessarily serious enough to warrant the forfeiture of compensation benefits. Breithaupt v. Emp't Appeals Bd., 453 N.W.2d 532, 535 (Iowa 1990). Misconduct sufficient to disqualify a claimant from receiving unemployment benefits "connotes some deliberate action or omission or such carelessness as to indicate a wrongful intent." Billingsley v. Iowa Dep't of Job Serv., 338 N.W.2d 538, 540 (Iowa Ct. App. 1983). "The focus is on deliberate, intentional or culpable acts by the employee." Gimbel v. Emp't Appeal Bd., 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter, the evidence fails to establish that claimant was discharged for an act of willful misconduct when claimant violated employer's policy concerning getting managerial approval prior to providing a price quote on a high-volume sale. Claimant was not warned concerning this policy, but did go through training on approvals.

The last incident, which brought about the discharge, fails to constitute misconduct because there was no willful disregard of procedural steps by claimant. The amount of product that claimant believed was to be purchased was vastly different from the amounts of lighting purchased. There was no showing that claimant would have made the same decisions had he known of the quantity that the buyer was going to purchase based on the quoted price. The quoted amount of lighting units was approximately ten percent of the actual number of units purchased. As claimant was on vacation during this portion of the process, any mistakes in this regard are not seen as willful. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

#### **DECISION:**

The decision of the representative dated September 11, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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