

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY SMITH**  
Claimant

**APPEAL NO: 12A-UI-03594-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 03-04-12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2012. The claimant participated in the hearing. Mike Mrotek, assistant general manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier for Menard from October 15, 2008 to March 8, 2012. The employer offers a rebate program to its customers whereby they receive an in-store credit for 11 percent of their purchase. The employer noticed a large number of rebates being sent in by the claimant. Upon further investigation, it discovered the claimant had used receipts left behind by customers to secure the rebates for herself. The employer's policy requires that any receipts left behind by a customer be torn into small pieces and thrown away for security purposes, as the receipts contain personal and financial information of the customer (Claimant's Exhibit B). The claimant sent in customer rebates approximately 30 to 40 times and the total rebate amount was \$70.00. The employer watched the surveillance video and observed the claimant take receipts left behind by customers. The employer posted a memo regarding the rebate policy next to the time clock in mid-February 2012, and the claimant's initials appeared next to it (Claimant's Exhibit A). The claimant denies ever seeing the memo and testified she did not initial the memo and was not familiar with the employer's policy regarding rebates (Claimant's Exhibit A). The rebate policy is also contained in the policy book located on every computer in the store. After reviewing the incident, the employer terminated the claimant's employment March 8, 2012.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant denies knowledge of the rebate policy, she knew or should have known that it was completely inappropriate to keep customers' receipts and use their rebates instead of tearing up and throwing away any receipts left behind by customers. Even if the claimant was not familiar with the policy, it is simply common sense to abstain from taking another individual's receipt, be it a customer, co-worker, or someone in front of you as a customer if you were also a customer. The claimant was not entitled to the rebates on items she did not purchase herself, and her actions were effectively the same as a theft from the employer and customers. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

**DECISION:**

The April 4, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw