IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANIE J MAGNUSSEN
Claimant

MENARD INC
Employer

APPEAL NO. 09A-UI-08718-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/26/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Janie Magnussen (claimant) appealed a representative's June 8, 2009 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Menard (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 2, 2009. The claimant participated personally. The employer was represented by Landon Palkola, Corporate Attorney, and participated by StaceyTrussoni, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant was hired on May 1, 2008, as a part-time production worker. The claimant signed for receipt of the employer's handbook and written drug policy on January 10, 2008. The policy states the employer may request a urine sample from an employee for drug testing whenever the employer deems it necessary. It states that an employee may be terminated for refusal to provide a sample for testing. The claimant submitted to pre-employment testing and was diagnosed with a "shy bladder". She had trouble producing urine on demand.

On March 4, 2009, the claimant was injured at work. She refused treatment and later when home from work. On March 5, 2009, the claimant did not feel well and went to the emergency room. She was diagnosed with a broken rib, given pain medication and muscle relaxers. The employer instructed the hospital to collect a urine sample from the claimant for drug testing purposes. The claimant drank water and tried for three hours but was unable to provide a sample. The claimant's body felt numb. The claimant was sent home. The hospital felt the drugs effected the claimant's ability to provide urine.

Later on March 6, 2009, the claimant called the employer because it had not called her. The employer instructed her to go to the laboratory for testing. The claimant went to the laboratory. They were out of cups and the claimant waited for them to return with cups. While waiting she felt sick and vomited. The laboratory worker returned with cups and told her they could not test her because she was sick. The claimant offered to be catheterized or give a blood sample. The laboratory refused. On March 9, 2009, the employer terminated the claimant for refusing to give a sample.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

This employer has a broad policy which calls for drug testing whenever it deems necessary rather than pre-employment, post accident or random testing. In this case the employer argues that testing was performed post accident.

The testing was not ordered immediately following the claimant's accident or immediately after she left the workplace on the day of the accident. The employer did not order testing until the following day after the claimant was given medical attention. The claimant never refused to offer a sample. She was medically unable to produce a sample. The employer failed to provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 8, 2009 decision (reference 03) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css