

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA ELLIS
Claimant

APPEAL NO: 12A-UI-08372-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 06-10-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 3, 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 August 7, 2012. The claimant participated in the hearing. Dan Newman, Assistant General Manager and Paul Hammell, Store Counsel, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two 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 receiving team member for Menards from March 8, 2000 to June 14, 2012. The employer's attendance policy states that if an employee accumulates 10 attendance occurrences within a rolling 90-day period her employment will be terminated. Incidents of tardiness of less than one hour result in one point; properly reported absences without a doctor's excuse result in three points; and no-call no-show absences result in five points. On April 3, 2012, the claimant was late in returning from lunch and received one point. On April 13, 2012, the claimant believed she was scheduled to start work at 8:00 a.m. She had agreed to fill in for a vacationing employee but thought that employee's time off did not begin until April 16, 2012. Consequently, she reported for her regularly scheduled shift on time but was considered a no-call no-show and received five points because she did not come in at 5:00 a.m. or call the employer. On June 11, 2012, the claimant ran out of her medication and went home to get it over her lunch break. There was a lot of traffic and the claimant was a few minutes late returning from her lunch period and received one point. On the evening of June 12, 2012, the claimant realized she had a court date at 1:00 p.m. the following day. She called her second assistant manager prior to her 8:00 a.m. start time June 13, 2012, and asked if she could work a split shift so she could attend her court hearing at 1:00 p.m. The second assistant manager told her she could switch her shift that day for her scheduled day off Friday, June 15, 2012. The employer considered the claimant's absence June 13, 2012, as an

unexcused absence and she received three points for a total of 10 points. The claimant received a written warning after each absence or incident of tardiness and was aware of her point totals. The employer terminated the claimant's employment June 14, 2012, for exceeding the allowed number of attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant exceeded the allowed number of attendance points, the April 13, 2012, absence the employer considered a no-call no-show was simply an honest mistake on the part of the claimant. She believed she was scheduled at 8:00 a.m. and showed up on time for her shift, not realizing she was supposed to start working for a vacationing co-worker at 5:00 a.m. that day and was assessed five

points. The June 13, 2012, absence was even more debatable, however. The claimant credibly testified that the second assistant manager told her she could switch shifts and work her scheduled day off, Friday, June 15, 2012, instead of working June 13, 2012, so she could go to court, but the claimant was still given three attendance points. Because at least three, if not eight of the claimant's attendance points, were questionable, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 3, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs