

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET L PAULSEN
Claimant

APPEAL NO: 10A-UI-11481-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 06/20/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Janet L. Paulsen (claimant) appealed a representative's August 11, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Menard, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2010. The claimant participated in the hearing and was represented by Hattie Holmes, Paralegal. Scott Wall, In-house Attorney, appeared on the employer's behalf and presented testimony from one witness, Joe Doyen. During the hearing, Employer's Exhibits One through Four were entered into evidence; the record was held open for submission and admission of Claimant's Exhibit A. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 19, 1984. She worked full time as a cashier at the employer's Waterloo, Iowa store. Her last day of work was June 23, 2010. The employer discharged her on that date. The reason asserted for the discharge was a perceived conflict of interest and misuse of discounted gift cards.

The claimant routinely exercised her right to purchase gift cards at a discount. She would on occasion sell them to outside friends, some for whom were involved in the construction business, and some she occasionally assisted in planting landscaping. On about two transactions in June the claimant handled sales made by some of these friends using gift cards they had received from the claimant.

The employer concluded that the claimant was engaging in business in conflict with the employer's business, a violation of the company policies, and that she had used her own gift cards in transactions she rang up herself. The claimant had not perceived she was doing

anything wrong, as she was relying on information from the company handbook indicating that the employee discount, which the claimant had used in purchasing the gift cards, could be used “for any reason and for anyone.” The claimant denied that she was doing any work for pay in conflict or competition with any service offered by the employer for a fee. There had been no disciplinary action given to the claimant on any issue prior to the termination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion she had engaged in a conflict of interest and mishandling of the gift cards she had obtained with the employee discount. Under the circumstances of this case, the claimant’s conduct was based on a good faith interpretation of one provision of the company policies, which the employer did not adequately reconcile with its interpretation of other provisions of its policies. Misconduct connotes volition. The claimant had not previously been warned that her conduct could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Even if there might have been a technical violation of another of the employer’s policies, there is no evidence the claimant intentionally acted to violate the employer’s policies. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 11, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css