

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF D FOHT
Claimant

MENARD INC
Employer

APPEAL 15A-UI-11662-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 16, 2015 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2015. Claimant participated. Employer participated through assistant general manager Ben Hogan and general manager Brent Henriksen, and was represented by store counsel Paul Hammell. Employer's Exhibits A through F were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a sales representative from January 8, 1990 and was separated from employment on September 30, 2015; when he was terminated.

According to the employer's Rest Break and Meal Break policy, employees are entitled to one break per four hours of work. When employees go on break, they are required to punch out in employer's timekeeping system. Claimant was aware of the policy.

Claimant has issues with his blood pressure and bleeding in his retinas. Claimant was taking medication for the blood pressure issues.

On Saturday, September 26, 2015, the store was very busy, and claimant became disoriented due to his medical conditions. Claimant left the store at 10:13 a.m. to get fresh air. Claimant came back into the store at 10:41 a.m. Claimant cannot recall much about what occurred during that time period. Claimant left work that day at approximately 11:00 a.m. While claimant was outside of the store, an employee asked assistant store manager Ben Hogan to identify claimant's whereabouts. Hogan could not locate claimant.

On Monday, September 28, 2015, Hogan reviewed surveillance footage and saw claimant leave the store at 10:13 a.m. and returning into the store at 10:41 a.m. Claimant only worked for two hours on September 26, so he was not entitled to a break. Claimant did not clock out during the time period he was outside of the store.

On Monday, September 28, 2015, claimant was absent from work due to illness. Claimant saw a doctor about his blood pressure medication on Monday. On Tuesday, September 29, 2015, claimant saw his eye doctor regarding the issues with his eyes.

On Wednesday, September 30, 2015, claimant returned to work and brought a doctor's note excusing him from work on Monday and stating he was receiving medical treatment. General manager Brent Henriksen and Hogan asked claimant why he left the store on September 26 without notifying anyone or clocking out. Claimant stated he did not know because he was disoriented and felt like he was going to pass out during the time frame in question. After he was terminated, claimant spoke with Jason Oberbroeckling, who was the department manager on duty on September 26. Oberbroeckling told claimant that he received a call from claimant from his cell phone during the time frame in question on September 26 and claimant told Oberbroeckling he was taking a break because he was not feeling well. Claimant cannot recall making the phone call.

Claimant had never been warned about similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

In this case, claimant felt like he was going to pass out because of a medical condition for which he was receiving treatment. Claimant left the store to get fresh air. Not surprisingly, the first thing on claimant's mind on September 26 was not whether he clocked out while he was experiencing the serious effects of his medical condition. Employer was aware of claimant's medical condition. The conduct for which claimant was discharged was merely an isolated incident and was not in deliberate disregard of employer's interests. Inasmuch as employer had not previously warned claimant about the issue leading to the separation and in light of claimant's long period of service for employer, it has not met the burden of proof to establish that claimant was terminated for misconduct.

DECISION:

The October 16, 2015 (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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