

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROCHELLE L. HEASLEY
Claimant

MENARD INC.
Employer

APPEAL 23A-UI-08466-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/23
Claimant: Appellant (1)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On September 5, 2023, the claimant/appellant filed an appeal from the August 23, 2023, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on March 9, 2023 for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2023. Claimant participated. Employer participated through First Assistant General Manager. Employer's Exhibits 1, 2, 3, and 4 were admitted into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the following:

Claimant began working for employer on March 13, 2018. Claimant last worked as a full-time Planogram Team Member. Claimant was separated from employment on March 14, 2023, when she was discharged.

An incident occurred in February 2023, where an employee (hereinafter Employee A) witnessed another Employee (hereinafter Employee B) urinate in public at the store. Employee A reported Employee B for urinating in public at the store to the general manager.

On March 7, 2023, claimant approached Employee A during work time and asked him why he reported Employee B for the incident in February 2023. Claimant is a co-worker and has no supervisory authority over Employee A. Claimant then proceeded to talk about how Employee B was a good employee and attempted to defend Employee B's actions to Employee A. Employee A was uncomfortable due the confrontation with Claimant and reported the incident to the employer. Employee A was sent home for the rest of the day due to the incident.

On March 9, 2023, claimant again approached Employee A and asked him questions regarding why he reported the incident involving Employee B to the General Manager instead of the receiving manager. Claimant then told Employee A he needed to go to the General Manager and make it right and that he needed to get Employee B's job back. Claimant threatened to blackmail Employee A regarding a relationship with another employee if he did not try to get Employee B's job back. Employee A removed himself from the area and the confrontation ended.

Employee A reported the March 9, 2023, incident to the employer. The employer interviewed Employee A and reviewed the store cameras. The cameras confirm the parties interacted on March 9, 2023. The video did not record the audio between the two parties.

The employer interviewed claimant regarding the incidents. Claimant admitted she spoke to Employee A about the incident involving Employee B. Claimant discuss Employee B being a good employee and that Employee A should get Employee B his job back. Claimant then brought up Employee A's relationship with another employee and claimed it was inappropriate. The employer investigated the relationship and concluded nothing was inappropriate about the relationship.

The employer has a policy that states:

The following is a partial list of actions which could result in disciplinary action:

(5) Interfering with the job performance of fellow Team Members during work time or in work areas.

(6) Threats, intimidation, harassment, fighting or physical abuse, and/or the use of profanities or abusive language directed at Customers, Vendors or Team Members. Fighting or physical abuse and/or the use of profanities or obscene language directed at Team Members. (Exhibit 3).

Claimant was aware of the policy. (Exhibit 4).

On October 15, 2018, claimant received a written warning for violating the employer's policy that prohibited making threats, intimidating or harassing another employee after she stated she was going to kill the other employee.

Claimant was discharged on March 14, 2023, for violating their policy that prohibited interfering with the job performance of a fellow team member and for intimidating and harassing another employee. (Exhibit 1).

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 and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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 impose discipline up to or including discharge for the incident under its policy. 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). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Claimant concerned herself with the termination of another employee due to Employee A reporting Employee B publicly urinating on the employer's property. Claimant took it upon herself to confront Employee A about the termination of Employee B and told Employee A he needed to get Employee B's job back. Claimant did this not once but twice to the same employee on different days. In addition, claimant threatened to blackmail Employee A if he did not do it. Claimant threatened to report Employee A's relationship with another employee because claimant believed he was in an inappropriate relationship. The employer has a policy that prohibits threats, intimidation, and harassment towards other employees. The claimant was aware of the policy. The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant deliberately and intentionally violated the employer's policy and this conduct is disqualifying misconduct. Benefits are denied.

DECISION:

The August 23, 2023, (reference 01) unemployment insurance 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.



Carly Smith
Administrative Law Judge

September 22, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.