

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RON ROUTH
Claimant

APPEAL NO. 08A-UI-07654-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 12-09-07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 19, 2008, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 8, 2008. The claimant participated in the hearing with his wife, Ashley Routh and Attorney Mark King. Patrick Plaehn, Assistant General Manager; Melissa Woodward, Human Resources Coordinator; and Attorney William Kelly participated in the hearing on behalf of the employer. Claimant's Exhibit A was 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 part-time shipping/receiving clerk for Menard from March 31, 2004 to July 16, 2008. The claimant reported a back injury to the employer around March 16, 2008, and told the second assistant manager he hurt his back at work. He saw his physician March 21, 2008, and was prescribed medication and follow up. He told his doctor the injury was work related. In May 2008 he asked the employer for a transfer to a position that required less lifting but the employer did not have anything available. On June 10, 2008, he received a note from his physician stating he could not lift more than 25 pounds for the next two weeks and his wife took the note to the employer. Consequently, the claimant believed he was off work until June 24, 2008, but the employer stated it did not receive the note and considered the claimant a no-call/no-show June 10, 12 and 14, 2008. He was also tardy April 10, 2008, June 12, 2008, and June 14, 2008, which gave him six violations within a 90-day rolling period, resulting in a terminable offense. The employer testified it gave him leave of absence paperwork but the claimant apparently did not fill it out correctly and the employer returned it to his wife and asked that it be done again but the claimant never completed a second set of paperwork and testified he never applied for a leave of absence. After being off two weeks because of the light-duty situation the claimant signed a personal leave paper from his physical therapist and believed

that excused him until August 2008. On July 16, 2008, the claimant received a letter from the employer terminating his employment because he "stopped showing up for work."

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 it appears there was some miscommunication between the parties there is no question that the claimant suffered a back injury. Although the employer denies that it was work related the claimant credibly testified he told the second assistant manager in March 2008 that he hurt his back at work and also told his physician it was work related. Additionally, the claimant had a note from his doctor placing him on light-duty work June 10, 2008, for two weeks and then signed a personal leave paper from his physical therapist indicating he was off work until the beginning of

August 2008. There should have been more frequent and specific communication between the parties but it does not appear that the claimant committed intentional misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The August 19, 2008, reference 03, decision is affirmed. 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/css