

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIMOTHY COOK
870 CENTER PT RD NE
CEDAR RAPIDS IA 52402

MENARD INC
4777 MENARD DR
EAU CLAIRE WI 54703

Appeal Number: 06A-UI-00918-ET
OC: 12-25-05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 18, 2006, 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 February 8, 2006. The claimant participated in the hearing with his father, Leonard Cook, and was represented by Attorney Robert Wilson. Brett Anderson, Human Resources Coordinator, and John Ryan, General Manager, participated in the hearing on behalf of the employer and were represented by Attorney Jennifer Geibel.

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 carryout man for Menard Inc. from December 4, 1985 to December 26, 2005. On December 16, 2005, the claimant arrived for work at 8:30 a.m. On his way into the building he saw a woman fall by the door and noticed hard packed snow and ice as well as water by the door. He told the front office manager and General Manager John Ryan that a woman had fallen outside and described the conditions by the door. He asked for rugs to put down, but the store did not have any in the store and did not have wet floor signs or dry mops. The employer did give the claimant permission to shovel. The claimant was still upset and Mr. Ryan sent Human Resources Coordinator Brett Anderson to talk to the claimant, who stated that Mr. Ryan "didn't care about people or guests." Mr. Anderson told the claimant the problem was resolved and he needed to stop yelling, but the claimant was still upset and told the employer he was going to call the central office. The employer said, "Go ahead but you are obviously upset and need to go home." The claimant replied that was the employer's "answer to everything." They continued to argue before the claimant went home. Later that night he called the employer to apologize. The claimant took his scheduled vacation and returned December 26, 2005, at which time the employer terminated his employment for insubordination December 16, 2005. The claimant has a learning disability and had been warned about his outbursts September 11, 2003, and November 18, 2004.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant's behavior December 16, 2005, was unprofessional. He was concerned about the welfare of the customers but expressed that concern to the employer in an inappropriate manner. The claimant has a learning disability and is subject to occasional outbursts. While not condoning the claimant's behavior December 16, 2005, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 18, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw