

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETHANY SPRINGSTEEN**  
Claimant

**APPEAL NO. 11A-UI-06966-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 04-24-11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 18, 2011, reference 01, 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 June 20, 2011. The claimant participated in the hearing. Thomas Westfall, human resources coordinator; Jeff Hovel, first assistant general manager; and Paul Hammell, store counsel; participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were 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 sales and billing department employee for Menard Inc. from October 18, 2010 to April 5, 2011. She was discharged from employment due to a final incident of absenteeism that occurred April 5, 2011. The employer's attendance policy allows employees to accumulate five attendance occurrences within a rolling 90-day period before termination results. Employees receive verbal warnings in writing following their first and second attendance occurrences, a written warning following their third attendance occurrence, a written warning and suspension at the general manager's discretion following their fourth attendance occurrence, and face termination following their fifth attendance occurrence (Employer's Exhibit One). Excused absences require a doctor's note or some other type of documentation and unexcused absences are absences without documentation. On November 27, 2010 and January 8, 2011, the claimant was absent due to illness without a doctor's excuse and received a first and second documented verbal warning (Employer's Exhibits Two and Three). On February 9, 2011, she was absent due to illness without a doctor's excuse and received a written warning (Employer's Exhibit Four). On February 13, 2011, she was 11 minutes tardy and received a written warning and was suspended February 22 through February 24, 2011. On February 14, 2011, she reported she was absent due to illness with a doctor's note and her absence was considered excused by the employer. On March 5, 2011, the claimant was absent due to a properly reported illness but did not have a

doctor's excuse and received a written warning and was suspended March 9 through March 11, 2011 (Employer's Exhibit Six). On April 4, 2011, the claimant was absent due to a properly reported illness. She was tardy April 5, 2011, when she went in to talk to her employer about whether her employment would be terminated for her absence the day before, and was notified she had exceeded the allowed number of attendance occurrences and the employer discharged her from employment at that time (Employer's Exhibit Seven).

### **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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant accumulated seven incidents of absenteeism or tardiness within a rolling 90-day period that resulted in her termination, five of those seven occurrences were due to properly reported illness. Although she did not have doctor's excuses for those absences, she also did not have health insurance, making it more unlikely she would go to the doctor for every short-term illness and pay the fee simply so she had a doctor's note for work. The claimant was tardy on two other occasions—11 minutes one time and the employer was unaware of how late she was the second time. The claimant took a taxi to work and when the taxi was late in arriving February 13, 2011, it caused the claimant to be 11 minutes late to work. The claimant denies she was tardy April 5, 2011, but her testimony was less credible than that of the employer. Because five of the claimant's seven absences were due to properly reported illness and she only had two incidents of tardiness during the same 90-day period, the administrative law judge cannot conclude her absences were excessive, as the absences due to properly reported illness do not count, as they are not volitional absences, which leaves the two incidents of tardiness, and that does not rise to the level of excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The May 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw