

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE A HEINZE
Claimant

APPEAL NO. 12A-UI-06722-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 05/13/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Dale Heinze, filed an appeal from a decision dated June 5, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 2, 2012. The claimant participated on his own behalf. The employer, Menard, participated by First Assistant Manager Mike Guard and was represented Store Counsel Paul Hammell.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dale Heinze was employed by Menard from September 10, 2008 until May 18, 2012 as a full-time cashier. He had received written warnings in the past regarding poor work performance, prompted by customer complaints. Each one warned him any further incidents could lead to disciplinary action up to and including discharge.

On May 16, 2012, the head cashier brought a newly hired cashier to Mr. Heinze and said he was to train her. The claimant refused, saying he did not like training people. The head cashier took the new hire elsewhere and reported the incident to the front end manager who reported to Assistant Store Manager Mike Guard. He talked to Mr. Heinze who confirmed he had declined to train the new employee because it was something he did not like to do. He was told there would be further action after the managers had consulted with the corporate human resources department.

On May 18, 2012, the claimant was discharged by Mr. Guard for insubordination and failure to perform his regular job duties.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been warned about inappropriate behavior in the past coming as a result of customer complaints. The final incident was insubordination, a refusal to perform a task assigned by a supervisor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The employer has the right to expect employees to perform their usual duties and reasonable tasks assigned by their supervisor. The claimant was discharged for insubordination and is disqualified.

DECISION:

The representative's decision of June 5, 2012, reference 01, is affirmed. Dale Heinze is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs