IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

IVONNE LUCERO
Claimant

MENARD INC
Employer

APPEAL NO. 18A-UI-09270-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/05/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Menard (employer) appealed a representative's August 28, 2018, decision (reference 02) that concluded Ivonne Lucero (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 24, 2018. The claimant participated personally. The employer was represented by Austin Stewart, Attorney at Law, and participated by Justin Taylor, Department Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 22, 2017, as a part-time general laborer. She signed for receipt of the employer's electronic handbook on August 22, 2017. The claimant was unsure how to access the handbook other than to go to her local library. The attendance policy stated that an employee would receive three attendance points and a written warning for each unexcused absence. The employer terminates employees who accumulate ten attendance points. The employer did not issue the claimant any warnings during her employment.

The attendance policy did not mention vacation time or indicate a limit on consecutive days of vacation. In the "Grow With Menards Team Member Information Booklet" it mentions unpaid absences of up to fourteen days and how they are not considered a leave of absence. For employees employed less than twelve months and absences more than fourteen days, the employer has parenting leaves, special winter leaves and military leaves available.

The claimant requested and the employer approved the claimant's thirteen day vacation from June 10 to 22, 2018. At the end of her vacation in Texas, the claimant's family home burned down. Law enforcement required her to remove items and clean the property. She immediately notified the employer on June 22, 2018, and asked for three to four more days of time off. The

employer told her if she returned to work on June 23, 2018, she could have more days off. The claimant could not drive the eight hundred miles and return to work on June 23, 2018. The employer did not offer her any leave of absence or allow her to use her two remaining days of vacation. The claimant expressed she wanted to continue working. The employer told her they considered her to have quit work because it could not possibly allow her to be away from work for more than fourteen consecutive days.

The claimant filed for unemployment insurance benefits with an effective date of August 5, 2018. The employer participated personally at the fact finding interview on August 27, 2018, by Justin Taylor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention of quitting work. The separation must be considered involuntary.

The claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The claimant properly reported her absence due to the loss of her family home. She had no prior history of absenteeism or warnings. The employer terminated her for properly reporting her absences and requesting additional time to deal with the unfortunate circumstance. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 28, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs