

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY NIELAND
Claimant

APPEAL NO. 07A-UI-11344-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 11/04/07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Menard, Inc. (employer) appealed an unemployment insurance decision dated November 29, 2007, reference 01, which held that Cody Nieland (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through Matt Novy, General Manager. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 employed as a full-time floor covering team member from June 28, 2006 through October 15, 2007. He was discharged for repeated disciplinary warnings and failure to follow the employer's directives. The claimant's work performance appeared to decline since June 2007. He received a written warning on June 12, 2007 for not performing his assigned duties. The claimant was supposed to offer special promotions over the PA system in order to bring customers back to his department but simply did not do this. A second warning was issued on July 2, 2007 and he was suspended for three days. The claimant again did not use the PA system to make the required announcements but claimed that he had done so. He was turned down for a possible raise on August 1, 2007 and when asked if he thought he deserved the raise, he acknowledged that he did not.

The claimant was discharged on Monday, October 15, 2007, after three additional incidents that occurred over the previous weekend. During that weekend, the claimant took a screw with a hook on it and drilled it into the wood desk in the floor covering department. He said he wanted to see if it was strong enough to hang his bow on it. He took the screw out but it left a large hole

in the wooden shelf. He was given a written warning for defacing Menard's property and when asked why he did it, he could not offer an explanation. The second incident was the claimant accessing his manager's computer account without authorization. Only managers are given passwords to access the computer system. The manager reported that he saw the claimant watching him when the manager typed in his password. Later when the manager returned to the department, he looked at the computer and saw that he was signed in even though he had previously signed out and was not using the computer. The claimant admitted his actions and once again, when he was asked why he did it, he had no explanation. The final incident over the weekend was another failure to follow the employer's directives. He was given two replacement rolls of carpet and was directed to put them out on the sales floor. The claimant said there was not enough room on the sales floor and put them in the overstock racks in the back. It took less effort to put them in the overstock racks as compared to putting them out on the sales floor. The manager on the following morning saw that there was plenty of room on the sales floor and again directed the claimant to put the carpet rolls out on the sales floor.

The claimant filed a claim for unemployment insurance benefits effective November 4, 2007 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). He was discharged for repeated disciplinary warnings and failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant demonstrated a pattern of ignoring the employer's directives and continued to do so even after a three-day suspension. Additionally, he showed a lack of respect for his manager's privacy and the employer's property. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard for the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 29, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css