

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY W MILLER**  
Claimant

**APPEAL NO. 14A-UI-08842-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 07/27/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jeffrey Miller (claimant) appealed a representative's August 21, 2014 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 30, 2014. The claimant participated personally. The employer was represented by Paul Hammell, In-House Counsel, and participated by Shaphan Smith, General Manager, and Zachary Deming, Second Assistant General Manager. The employer offered and Exhibit One 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 July 18, 2013 and at the end of his employment he was working as a full-time assistant wall coverings manager. The claimant signed for receipt of the employer's handbook on July 8, 2013. The handbook has a non-fraternization policy. The policy states in part: "Personal relationships between managers and subordinates are prohibited as these relationships, intentionally or not, impact professionalism and trust. This does not mean Team Members shouldn't be personable and friendly with their managers or subordinates, but means that everyone should use professional judgment." It was not uncommon for managers to have subordinates as friends on their Facebook page. One manager went out to a restaurant with subordinates.

The claimant and a subordinate sent text messages to each other. When there was a complaint, the employer issued the claimant a written warning and a three-day suspension. The employer notified the claimant that further infractions could result in termination from employment. At first the claimant told the employer he had not had text contact with the subordinate. In the same conversation, he admitted the contact. The claimant had no contact with the subordinate after June 10, 2014.

On July 25, 2014 the claimant was arrested at the employer's store for having a relationship with the subordinate before June 10, 2014. On July 29, 2014 the claimant returned to the store to work and the employer terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer was discovered on or about July 7, 2014. The claimant was not discharged until July 29, 2014. The termination did not occur at the time of the knowledge of the incident. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's August 21, 2014 (reference 01) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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