

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ELAINE A SIMMONS
1708 – 10TH AVE
BELLE PLAINE IA 52208

MENARD INC
4777 MENARD DR
EAU CLAIRE WI 54703

Appeal Number: 04A-UI-11263-HT
OC: 09/19/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Elaine Simmons, filed an appeal from a decision dated October 7, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 13, 2004. The claimant participated on her own behalf. The employer, Menard, participated by General Manager Gus Gerken and Front End Manager Chris Ruff. The employer was represented by Store Counsel James McMenomy. Exhibit A was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Elaine Simmons was employed by Menard from April 11, 2000 until September 20, 2004. She was a part-time cashier.

Ms. Simmons received training when she became a cashier in November 2003. Shortly after starting the position, she began receiving disciplinary action for errors. Warnings given on December 23, 2003, February 14, March 12 and 23, June 9, July 1 and August 25, 2004, were all for taking checks written for the incorrect amount and one which was without a signature. The last two warnings included three-day suspensions. The errors occurred because she did not look at the check itself when she keyed the amount into the cash register, but would simply input the transaction total rung up by the cash register. Front End Manager Chris Ruff and his assistants, who issued the disciplinary action, would tell her to always refer to the check when inputting the amount. Ms. Simmons was aware of the procedure but consistently failed to do this, and continued to key in the transaction total from the register.

The final warning in August notified her that her job was in jeopardy if there were any further incidents. On September 17, 2004, it was discovered that she again had accepted a check for less than the amount of the purchase total. Mr. Ruff and General Manager Gus Gerken reviewed the incident and the claimant's past disciplinary record. She was notified of her discharge by Mr. Ruff on September 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant does not deny she consistently accepted customer checks for incorrect amounts. Ms. Simmons asserted she did not receive additional training, but the administrative law judge does not understand what additional training would have accomplished since she admitted she was fully aware of the proper check handling procedure, and that the amount on the face of the check was to be entered into the register, not the transaction total from the register itself. Additional training would not have taught her anything she did not already know about check handling procedures.

Ms. Simmons also felt she should have been provided with some sort of "check list" to refer to in order to remind herself what needed to be done. However, there was nothing which prevented her from preparing such a check list for herself and keeping it with her at the register. She did not seek help from the human resources department or her immediate manager to prepare this list, but apparently felt they should have recognized her needs and provided for them without her having to say anything.

The administrative law judge accepts the claimant was not deliberately attempting to defraud the employer in any way. However, she is guilty of repeated negligence and inattention to her duties to such a degree as to evidence a willful disregard for the best interests of the employer. Under the provisions of the above Administrative Code section, this is also misconduct for which she is disqualified.

DECISION:

The representative's decision of October 7, 2004, reference 01, is affirmed. Elaine Simmons is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/smc