

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NORINA L SHEPHERD**  
Claimant

**APPEAL NO. 12A-UI-11712-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 08/26/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Norina Shepherd (claimant) appealed a representative's September 25, 2012 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Menard (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 24, 2012. The claimant participated personally. The employer participated by Lance Gesell, Plant 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 November 30, 2010, as a full-time general laborer. The claimant signed for receipt of the employer's updated handbook on December 22, 2011. The employer issued the claimant a written warning for absenteeism on February 15 and 23, 2012. The claimant had accumulated six points. The claimant understood that she would be terminated if she accumulated ten or more points.

The claimant requested and was granted a leave of absence from March 16 to 19, 2012, to go to California. Her plane ticket's return date was March 19, 2012. On March 19, 2012, the claimant called the airlines and changed her flight's return date to March 22, 2012. She thought she called the employer on March 20, 2012, to state she needed a couple days more, but the employer has no record of that. The employer assessed the claimant five attendance points for failure to notify the employer of her absence. On March 22, 2012, the claimant called the airlines and changed her return date to March 23, 2012. The claimant remembers calling the employer on March 22, 2012, and stating she would return to work on March 24, 2012. The employer has no record of that call. On March 23, 2012, the claimant called and spoke to the employer. The claimant had accumulated more than ten attendance points. The employer terminated the claimant.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

## **DECISION:**

The representative's September 25, 2012 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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