

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L MOSSMAN
Claimant

APPEAL NO. 13A-UI-12851-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 10/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 13, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 10, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Gus Gerken participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a hardware sales representative from July 12, 2012, to October 21, 2013. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer before the start of their shift if they were not able to work as scheduled. Under the policy, employees were subject to termination after receiving ten attendance points. Employees receive three points for an unexcused absence when an employee properly notifies the employer and three points if the employee punches in 60 minutes or more after the start of the shift without proper notice or excuse. An absence is excused if an employee provides documentation within three days establishing that the absence or tardy was for reasons beyond the employee's control.

He received a written warning on August 9 after an absence due to illness with proper notice on August 7 for which he received three points. The claimant received a written warning on August 12 after he was over 60 minutes late due to illness without proper notice to the employer, for which he received three points. He received a three-day suspension on September 25 after an absence due to illness with proper notice on September 23 for which he received three points. He did not provide any documentation to excuse the absences or tardy. The claimant knew he was at nine points and could be discharged if he received additional points.

The claimant forgot that he was scheduled to work at 8:00 a.m. on October 20. He checked his schedule on line and found out his mistake. He called in after the start of his shift to report he was going to be late and reported to work 66 minutes late.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The evidence establishes excessive unexcused absenteeism, including a final incident after the claimant was warned where he was late for an unexcused reason without proper notice. Work-connected misconduct has been shown in this case.

DECISION:

The unemployment insurance decision dated November 13, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css