

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANNER R COX**  
Claimant

**APPEAL NO: 12A-UI-07491-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 05/20/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 13, 2012, reference 01, that held he was discharged for misconduct on May 21, 2012, and which denied benefits. A telephone hearing was held on July 16, 2012. The claimant participated. Lindsay Sandifer, HR coordinator, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a part-time receiving team member on September 11, 2009, and last worked for the employer as full-time on May 21, 2012. The employer had a general policy regulation that prohibits an employee from loafing on the job, which is subject to discipline.

The store general manager discharged claimant on May 21 for loafing on the job. He observed security video regarding claimant's work on May 5, and May 11 that he concluded showed him being an unproductive employee. When he discharged, claimant he told him he was acting weird and standing around. Claimant denies he was loafing. He also states he was never issued any prior warning or discipline for this type of conduct. Claimant was not given an opportunity to watch the store video.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 21, 2012, for a violation of company policy by loafing.

The employer representative who observed the store video of claimant's conduct did not testify and/or offer a written statement about what he saw that caused him to believe claimant was loafing. Claimant denies the loafing conduct and there is no evidence of any prior warning or discipline. Job-disqualifying misconduct is not established.

**DECISION:**

The department decision dated June 13, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on May 21, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw