

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE SCHMIG
Claimant

APPEAL NO: 13A-UI-06680-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 05/12/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Nicole Schmig (claimant) appealed an unemployment insurance decision dated May 30, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Menard, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on July 8, 2013. The claimant participated in the hearing with her mother, Dianna Walter. The employer participated through General Manager Tim Bormann, Cashier Erica Miller and Representative Alex Meyer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a part-time cashier from April 24, 2012 through May 7, 2013 when she was discharged for violation of workplace rules and general regulation number six. She was inappropriate, offensive and abusive to customers on May 6, 2013 and a customer complained to the store's human resource department.

The claimant was working as a cashier in the garden center and a customer had waited in her line while two other customers checked out before him. He wrote in an email dated May 6, 2013 at 9:55 p.m. that when it was his turn to check out:

...“the cashier threw her radio on the counter and shouted to a co-worker that she ‘still hasn’t been able to go to the bathroom’ and she left the register without acknowledging either myself or the other gentleman waiting to check out. A young man came to the register...unable to check us out himself, radioed for help. Another man came to the register and called to the front of the store for assistance, explaining that the cashier needed reprimanded for leaving her register with customers in line. Another cashier, a

young lady, came out to the register – but was unable to check us out because the original cashier (Nicole) had left herself logged in. She called a manager (the FOURTH person to the register after Nicole had left to relieve herself) – who said absolutely nothing to those of us in line and unlocked the register, before he himself departed. At this point there were two more people in line. JUST WHEN I THOUGHT THIS WAS AS BAD AS THE EXPERIENCE COULD GET...IT GOT MUCH WORSE:

Nicole then returned to the register while the young lady was checking out the items in my cart and to my absolute dismay – she started firing off complaints such as: ‘they have me working in the sun’, ‘they haven’t given me a break’, and most shockingly ‘I am so sick of the snobby people we work with.’ Had I not already swiped my card to pay, I would have left every single thing in my cart and walked away. There are a LOT of hardware, appliance, and garden center stores within a half mile of your store...and you can bet I have never seen such despicable behavior and awful customer service at any one of these stores. As a first time homeowner, I have quite a long list of things I need to buy...and I am no longer convinced that my local Menards store is where I should be shopping for my upcoming projects. For the sake of your other customers, I would strongly urge to you to consider how Nicole would have made you feel today if you were standing in her line when she chose to throw a fit and walk away from her register with you in line and then have to stand there and hear her spout off about how much she really hated working for your company while you were in the middle of a purchase. There were five people that came to that register while I was trying to check out....I didn’t hear one sincere apology from any of them.

I’m truly and deeply offended....I have never wished for anyone to ever lose their job on my account...but today was certainly an exception. Nicole should NEVER be in a position to represent your company or anyone else’s.”

The complaint was given to the store manager who discharged the claimant on the following day. The claimant admits leaving her register with customers in line and while she denies saying the specific complaints the customer printed in his letter, she admits she did complain to herself after she returned from the bathroom. She was frustrated with the employer about unfair treatment and she was forced to wait to use the restroom when she had a kidney infection.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 7, 2013 for inappropriate and offensive conduct to and in front of customers on May 6, 2013. She may have been justified in her feelings of frustration but her unprofessional conduct in front of paying customers could not be tolerated. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated May 30, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css