

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MACY K STEINKAMP
Claimant

APPEAL NO. 19A-UI-03838-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/14/19
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Macy Steinkamp (claimant) appealed a representative's May 1, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 31, 2019. The claimant was represented by William Kurth, Attorney at Law, and participated personally and through Jason Trott, Fiancé. The employer was represented by Paul Hammell, Attorney at Law, and participated by Travis Spiker, General Manager, and Ray Miller, Second Assistant General Manager. The employer offered and Exhibit 1 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 May 1, 2018, as a full-time team lead of inventory. She signed for receipt of the employer's handbook on February 14, 2018. The handbook included a policy that stated "Team Members are not allowed to use cell phones for personal reasons such as texting, e-mailing, or browsing the Internet while punched in and working anywhere in the store or yard. Team Members may use their cell phone during their paid or unpaid break for these purposes when they are off the sales floor." The employer did not issue her any warnings.

On April 11, 2019, the claimant was seen on video camera for twenty minutes between 8:28 a.m. to 8:49 a.m. on her cellphone taking repeated calls. During this time, she was on the sales floor and not performing work. She did not clock out in order to use her phone.

On April 15, 2019, the claimant's supervisor, a second assistant general manager, approached the claimant with the front end manager just after she punched in for work. In a front office, the supervisor told the claimant he wanted to speak to her about her cellphone usage. The

claimant told him she was not going to follow the rule and punch out at the front of the store to use her phone. She asked the supervisor if he was going to fire her. The supervisor told her he was leaning toward firing her. The supervisor was concerned that the claimant had voiced an intent to disobey the rule in the future. The claimant stood up and walked away from the supervisor.

The supervisor followed the claimant to a back office where the claimant's fiancé was working. She entered the room crying and asking her fiancé for the keys. She told him that she was fired because her son had to go to the hospital for emergency surgery. The supervisor saw the claimant gather her items to leave the building and thought she was going to walk out. The supervisor said he would need her badge. The claimant said she knew that. She gave the supervisor her badge and left the building. Continued work was available for the claimant had she not separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.25(33) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She walked away from the employer, gathered her belongings and left work. When an employee quits work after having been reprimanded, her leaving is without good cause attributable to the employer. Likewise, when an employee quits work because she believes her performance is not to the satisfaction of the employer and the employer has not requested she leave, her leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded and the employer did not ask her to leave. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

In the alternative, the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Department of Job Service*, 373 N.W.2d 507 (Iowa 1985). The claimant voiced an intent to disobey the employer's rule in the future. The claimant's actions rise to the level of misconduct. Benefits are denied.

DECISION:

The representative's May 1, 2019, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. In the alternative, she was discharged for misconduct with the same effect. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs