

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRIAN T COLLUM**  
Claimant

**MENARD INC**  
Employer

**APPEAL 21A-UI-12664-ML-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 22, 2021, Brian Collum (claimant/appellant), filed a timely appeal from the Iowa Workforce Development decision dated May 20, 2021 (reference 01) that denied benefits.

A telephone hearing was held on July 29, 2021. The parties were properly notified of the hearing. The claimant participated personally. Menard Inc. (employer/respondent) participated by Attorney Paul Hammell. General Manager Jeremy Mead, Assistant Department Manager Nancy Gutierrez, and Assistant Department Manager Ryleigh Beedle participated as witnesses for employer.

Claimant's Exhibits 1 and 2 were offered and accepted into the evidentiary record. Employer's Exhibits A and B were offered and accepted into the evidentiary record.

**ISSUES:**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant initially worked for the employer as a full-time 1<sup>st</sup> assistant manager in the Hardware Department. He then worked as a full-time team member in the Wall Coverings Department. Claimant's first day of employment was March 25, 2020. The last day claimant worked on the job was March 17, 2021. The employer discharged claimant on March 18, 2021.

Claimant was discharged due to insubordination and unsatisfactory work habits. The most recent incidents leading to discharge occurred on March 12, 2021, and March 17, 2021. On March 12, 2021, claimant was given a task list to complete before he left for the day. Ms. Beedle drafted the task list and left it on a desk below the time clock with claimant's name on it. Claimant did not pick up the task list when he clocked in; however, he later told Ms. Beedle that he had seen it. Claimant did not complete any of the listed tasks. The tasks were eventually completed by another team member.

According to claimant, there was not a task list with his name on it on the desk when he clocked in on March 12, 2021. Claimant testified that there were general tasks or task lists for his department to complete; however, there was not a task list that was specifically assigned to him on the desk. Further, claimant testified that the general task lists could be completed over a 3-day time period. Claimant testified he was extremely busy on March 13, 2021, and he was off work due to illness on March 14, 2021, and March 15, 2021, so he was unable to complete the general task list.

Ms. Beedle next drafted a task list for claimant to complete on March 17, 2021. Again, the task list was left on a desk below the time clock with claimant's name on it. Ms. Beedle physically handed the task list to claimant when she noticed claimant had not picked it up when he clocked in. Claimant did not make any attempt to complete any of the listed tasks. The tasks were eventually completed by another team member.

According to claimant, there was not a task list waiting for him on the desk when he clocked in on March 17, 2021. Because there was no task list for him to complete, claimant started doing freight. Claimant asserts he did not know about the March 17, 2021, task list until an agitated Ms. Beedle approached him in the paint department and asked him about it. According to claimant, Ms. Beedle had a scraping knife in her hand and she was pointing it at him. Claimant asserts that Ms. Beedle did not hand him a task list during the interaction. Claimant testified that he walked away from Ms. Beedle and the situation without saying anything because he was essentially in shock. With ten minutes left in his shift, claimant, for the first time, looked for, but could not find, the task list. Claimant asserts the employer hid the task list so it could fire him.

The need for a task list stemmed from prior instances in which claimant failed to complete regular job duties.

One month prior to his discharge, claimant was demoted from a 1<sup>st</sup> Assistant Manager in the Hardware Department to a team member in the Wall Coverings Department. According to his personnel file, claimant was demoted because of multiple communications in either verbal or written form and receiving a C rating on his 2020 Value and Performance rating form. The rating was ranked in the bottom two percent for the company.

On February 17, 2021, claimant received a written warning for making inappropriate and/or condescending remarks to team members. As part of the written warning, the employer instructed claimant that he needed to complete his work before going home and he shouldn't be leaving things for other team members and/or managers to complete. The warning provided that failure to improve could result in suspension, demotion, and/or termination. Ms. Gutierrez testified to an instance in which she asked claimant to put a cart of paint away and claimant refused to do so because he was going to be taking his lunch soon. Ms. Gutierrez told claimant that he only had an hour of work left and he should not be taking his lunch so late. Claimant ignored Ms. Gutierrez and left anyways.

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

For the reasons set forth below, the decision dated May 20, 2021 (reference 01) that denied benefits is affirmed.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying

misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Insubordination can manifest in several different ways. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Id.* Misconduct can be found when a claimant was discharged for refusing to complete job tasks after his shift because he created the extra job tasks by working too slow. *Boyd v. Iowa Dept. of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The refusal of a prison guard to answer questions on his private drug use constitutes job misconduct since the prison's rule requiring him to disclose this information was necessary to the functioning of the prison system. *Ross v. Iowa State Penitentiary*, 376 N.W.2d 642 (Iowa App. 1985). However, if the request was unreasonable or the claimant had a good faith belief or good cause to refuse the request, no misconduct would be found. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause).

The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The undersigned finds the employer's testimony to be more reliable and credible than claimant's. Claimant did not present as a particularly credible witness. The employer representatives were calm and consistent in their testimony. On the other hand, claimant could be heard scoffing at various times throughout the employer's testimony. The undersigned did not find credible claimant's testimony that he never received the March 12, 2021, or March 17, 2021, task lists. The undersigned does not find credible claimant's testimony that his name was added to the task lists after the fact, or that the employer hid the task lists from him in an effort to terminate his employment. The undersigned does not accept claimant's testimony that Ms. Beedle approached him with a knife in a threatening manner. The employer conducted an

investigation into the alleged incident and determined Ms. Beedle did not have a knife in her hand.

In this case, claimant was instructed to complete a task list on two occasions in short succession. The tasks were reasonable as they presented no hardship to the employee and no threat to his or her health, safety, or morals. See *Endicott v. Iowa Dep't of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985). This was not a good faith error in judgment. Claimant was well-versed in task lists as he had drafted and assigned them while working as a manager. When approached about the task list on March 17, 2021, claimant walked away without acknowledging Ms. Beedle's request. It was not until 10 minutes were left in his shift that claimant searched for the task list.

Claimant did not have good cause to refuse the request. There was no mistake, misunderstanding or misinterpretation involved when claimant intentionally refused to complete the tasks on the assigned task list. Claimant deliberately failed to follow his supervisor's simple instructions, in violation of the employer's written policy and deliberately disregarding the employer's interests. As such, the employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Benefits are denied.

**DECISION:**

The May 20, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Michael J. Lunn  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 16, 2021  
Decision Dated and Mailed

mjl/lj