

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY R BONNEY
Claimant

APPEAL NO. 09A-UI-11277-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**Original Claim: 06/28/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anthony Bonney filed a timely appeal from a representative's decision dated July 29, 2009, reference 01, which denied unemployment insurance benefits based upon his separation from Menard, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on August 21, 2009. The claimant participated personally. The employer participated by Mr. William Kelly, corporate counsel, and Mr. Jim Julian, general manager. Employer Exhibits One through Four were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Anthony Bonney was employed by Menard, Inc. from May 1, 2002, until June 26, 2009, when he was discharged for violation of a known company rule. Mr. Bonney held the position of full-time second assistant general manager and was paid by the hour. His immediate supervisor was Jim Julian, general manager.

The claimant was discharged from employment following an investigation into the allegation of a female worker that Mr. Bonney had a personal relationship with a female employee, which violated the company's policy against fraternization.

On June 24, 2009, a young female cashier informed Mr. Julian that she had had a personal relationship with Mr. Bonney on one occasion when she accompanied Mr. Bonney home from a bar some months previous. Mr. Julian obtained a statement from the claimant. In his statement, Mr. Bonney verified the female employee had accompanied him home on that night but no further relationship had taken place. Under the terms of the company's non-fraternization policy, personal relationships between managers and subordinates are prohibited, as well as fraternization between management team members and vendors or other contracting services by Menards. Management team members are warned that questionable

behavior is subject to investigation and disciplinary action that may include immediate termination. Management team members who find themselves in questionable situations are advised to bring the issue immediately to the attention of their manager and that voluntary reporting would be a factor to be considered in determining the employer's disciplinary course of action. Mr. Bonney was aware of the company policy and had acknowledged receiving a copy of it. The claimant did not report this personal relationship with the female worker prior to the disclosure by the female cashier that was voluntarily made one day before her departure from Menards employment.

Menards has extended its non-fraternization policy to cover individuals with less management authority than general managers or assistant general managers. Employees who are involved in personal relationships prior to the imposition of the rule on their management classification were not subject to the rule, provided they had provided notification to the company.

It is the claimant's position that as others with less management authority may have had personal relationships or ongoing relationships with another employee of Menards but were not subject to disciplinary action, he considers his temporary relationship with the female cashier to be no different than being members of a "bowling team," which is not prohibited. The claimant believes that his discharge was motivated by reasons other than his conduct with the female cashier in question.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It is.

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 evidence in the record establishes that Mr. Bonney was aware of the company's anti-fraternization rule that applied a more stringent level of non-fraternization for company managers and general managers. The purpose of the company's rule was clear, to prohibit interpersonal contact between high-level management and subordinates that may have resulted in intimidation, favored treatment, or the potential for legal liability to the company. The administrative law judge concludes, based upon the evidence in the record, that the claimant knew or should have know that having a sexual relationship with a female worker on occasion was prohibited. The claimant was aware that if an occasion had arisen where the rule may have been violated, he had a responsibility to inform upper management of the violation so that the company could promptly resolve any issues and avoid future potential problems or legal liabilities.

The administrative law judge concludes that other relationships cited by Mr. Bonney in his testimony were governed by the company policy that allowed such relationships to continue if they were in place prior to the imposition of the rule on the level of management affected, or if the employee had provided the required notice to the company. The claimant's testimony that having sexual contact with a female subordinate is no different than fraternization on a bowling team strains credibility.

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in showing that the claimant's conduct was in disregard of the employer's interests and standards of behavior that an employer has a right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated July 29, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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