

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT EDLER
Claimant

APPEAL NO. 09A-UI-06245-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03/29/09
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated April 15, 2009, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 19, 2009. The claimant participated personally. The employer participated by Tony Bonney, assistant general manager, and Matt Baugh hardware manager. The employer was represented by Jason Kuiper. The record consists of the testimony of Tony Bonney; the testimony of Matt Baugh; the testimony of Robert Elder; and Employer's Exhibits 1-7.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a casual part time stocker. He generally worked from 5:00 a.m. until 9:00 a.m. He was terminated effective March 26, 2009, for threatening his supervisor Matt Baugh.

The event which led to the claimant's termination occurred on March 25, 2009. The claimant approached Mr. Baugh, claiming that another employee had stolen his "rag." The rag was actually a small towel that belonged to the claimant and had been in the cart the claimant was using. Mr. Baugh explained to the claimant that the other employee was new and had inadvertently taken the towel. The claimant said that he hated thieves and Mr. Baugh did what he could to defuse the situation.

Twenty minutes later the claimant again approached Mr. Baugh. He was still upset about the towel that he believed had been stolen. He asked Mr. Baugh if he (Mr. Baugh) believed that he

had been wrong about the towel and Mr. Baugh again explained that the other employee was a new employee and had not realized that the towel was the claimant's personal property. The claimant became irate and told Mr. Baugh that he (Mr. Baugh) would "hurt and bleed".

Mr. Bonney, the assistant general manager, witnessed the claimant's behavior and words. He perceived the claimant's actions as a direct threat against Mr. Baugh. He asked for the claimant's badge and told him to leave. The employer has a written policy that prohibited fighting, threats, intimidation, harassment or physical abuse of co-employees. This written policy is contained in the Menard employee handbook, which the claimant received at the time of hire.

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 evidence in this case established that the claimant made a threatening comment to his supervisor that indicated that the claimant might physically harm the supervisor. The interaction between the claimant and his supervisor was witnessed by the assistant general manager, who concluded that the claimant's conduct was serious enough to warrant immediate termination.

The employer had a written policy that prohibited the claimant from threatening a co-employee with physical abuse. The claimant had a copy of that written policy and therefore would know that disciplinary action could result if there was a violation of that policy. An employer has a

vested interest in maintaining a violence-free workplace and when a threat is made to do physical harm, an employer must take action. The claimant not only violated the employer's work rules, but his deliberate conduct constituted a breach of the duties and obligations he owed to his employer. Benefits are denied.

DECISION:

The decision of the representative dated April 15, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs