

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TRESA BEDFORD
Claimant

APPEAL 22A-UI-15456-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/03/22
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 20, 2022 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged on July 7, 2022 for conduct not in the employer's best interests. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2022. Claimant participated. Employer participated through Bobby Budea, General Manager. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

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

Claimant was employed as a full-time Team Member from April 28, 2015 until her employment with Menard ended on July 7, 2022. Claimant's direct supervisor was Bobby Budea, General Manager.

On December 29, 2021, claimant received a written warning and three-day suspension for interfering with other employees and being too concerned about their actions. The warning stated that future offenses may result in termination of employment. Budea told claimant that if she felt strongly about other employees' actions, then she should apply for a management position, otherwise she should "stay in her lane."

On July 5, 2022, a manager reported to work with her hair dyed pink. Employer has a policy prohibiting employees from having "non-traditional hair color." Claimant was irritated that the manager was violating the policy. Claimant printed a copy of employer's policy regarding hair color and left it for the manager to see. On July 6, 2022, Budea learned of the incident because team members were discussing it.

On July 7, 2022, employer terminated claimant's employment finding that it violated employer's policy prohibiting discrimination and harassment and that it was similar to the conduct that led to claimant's disciplinary warning and suspension in December 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 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 Code section 96.5(2)d provides:

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides (emphasis added):

(8) *Past acts of misconduct*. While **past acts and warnings can be used to determine the magnitude of a current act of misconduct**, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

Claimant had a prior warning for interfering with other employees. The warning resulted in a three-day suspension and notified claimant that future incidents may result in termination of employment. Claimant knew that her job was in jeopardy.

On July 5, 2022, claimant printed off employer's policy about hair color and left it for an employee who was in violation of policy. Policing other employees' conduct was not one of claimant's job duties. If claimant were concerned with the policy violation, then she should have reported it to Budea or human resources. Claimant did not need to interfere in the matter. Claimant's actions were unnecessary, embarrassing and disruptive. Claimant's conduct, in light of her prior warning, evinces a willful disregard for employer's interests. Claimant violated the standards of behavior that employer had a right to expect from her and clearly communicated to her. Claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are denied.

DECISION:

The July 20, 2022 (reference 01) unemployment insurance decision is AFFIRMED. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied 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.

A handwritten signature in cursive script, appearing to read "Adrienne C. Williamson", written in black ink on a light background.

Adrienne C. Williamson
Administrative Law Judge

October 4, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.