

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY L HANSON
Claimant

APPEAL NO. 09A-UI-10788-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**Original Claim: 06/21/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nancy Hanson filed a timely appeal from a representative's decision dated July 21, 2009, reference 01, that denied benefits based upon her separation from Menard, Inc. After due notice, a hearing was held in Cedar Rapids, Iowa, on October 20, 2009. The claimant participated personally. The employer participated by Jason Kuiper, in-house attorney, and Gus Gerkin, general manager. Employer's Exhibits One through Four and Claimant's Exhibits A through G were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Nancy Hanson was employed by Menard, Inc. from May 27, 1997, until June 24, 2009. The claimant was employed as a full-time cashier and was paid by the hour.

Ms. Hanson was discharged on June 24, 2009, based upon a report from a "mystery shopper" who had indicated the claimant had been rude in her manner and tone, had failed to recognize customers, and had not paid proper attention to customers coming through her cashier line. Company management reviewed the security tapes of the event. Based upon the observations, management agreed that the claimant had violated previous warnings that had been served upon her about being courteous and attentive to customers, and a decision was made to terminate the claimant.

The claimant had been the subject of numerous complaints, both verbal and written, during the course of her employment regarding the manner in which she dealt with company customers. Ms. Hanson had received initial training from the company and had been reminded during regular staff meetings of the necessity to be courteous to company patrons. The claimant had been specifically warned on April 28, 2009, for failure to follow company policies. The claimant

had also been specifically warned in July of 2007 after a letter critical of the claimant's demeanor and manner had been received by the company.

It is the claimant's position that her manner and demeanor may have been affected by other factors, such as other customers or the business requirements. The claimant denies being intentionally rude or ignoring customers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer has sustained its burden of proof through a preponderance of the evidence in showing that the claimant's discharge was disqualifying.

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 Ms. Hanson had been reminded and warned on numerous occasions regarding her demeanor and the manner in which she interacted with and waited upon company customers. The claimant had received trainings and had been reminded on a regular basis during staff meetings of the necessity to treat customers in a courteous and attentive manner. The claimant had also received specific warnings from the employer after numerous complaints had been received regarding the claimant's manner of dealing with company customers. When the employer received the shopper's report indicating the claimant continued to be rude and to ignore customers, a decision was made to investigate further. A

review of the surveillance tape confirmed the mystery shopper's conclusions and the claimant was discharged. The administrative law judge concludes that the claimant was aware of the employer's reasonable expectations and had been adequately warned prior to being discharged when she continued to violate company expectations by continuing to fail to provide courteous service to clients. Benefits are withheld.

DECISION:

The representative's decision dated July 21, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw