

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACHARY D ANDERSON**  
Claimant

**APPEAL NO. 09A-UI-07666-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**Original Claim: 04/12/09  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 11, 2009. Claimant participated. Employer participated through Mike Thede, general manager, and was represented by Jason Kuiper, store counsel, Attorney at Law. Employer's Exhibits 2 through 3 were received.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a team member and was separated on April 3, 2009. On the afternoon of that date, claimant knelt down looking at a car charger, looked over his shoulder to the right and left, took the item, and went to the hardware desk. Thede saw him from his desk about 15 feet away, followed him towards the hardware desk another 35 feet away, and saw him scan the item as if he was looking for a price, but the cell phone items were all priced on the shelves. He then followed claimant to a different part of the store, saw him put the empty package back on the shelf opposite the rodent control shelf and was in the process of putting the item in his pants when Thede stopped him and told him to leave the store or he would press theft charges. Claimant argues he found the opened package on a shelf near the rodent control items he was working on but denies he knew what the item was until he was told at the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 parties' credibility is the primary determining factor in the decision whether or not to allow benefits in this fact situation. Employer had sequentially significant and detailed recollection of the events leading to the separation and the administrative law judge finds it unlikely that claimant would recall handling an opened package of merchandise but not recall what it contained when he was discharged within minutes and feet of handling it. Thus, employer's testimony is credible. Claimant's attempted theft of the car charger is evidence of willful job related misconduct. Benefits are denied.

#### **DECISION:**

The May 12, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw