

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTIN M TAM**  
Claimant

**APPEAL NO. 09A-UI-08590-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 05/10/09**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated June 12, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Menard, Inc. After due notice, a telephone conference hearing was scheduled for and held on July 1, 2009. The claimant participated personally. The employer participated by Jason Kuiper, Attorney at Law/Corporate Counsel and witnesses Timothy Bormann, General Manager, and Jerry Walter, Friend and Manager. Employer's Exhibits One through Four were received into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: Christin Tam was employed as a part-time cashier for Menard, Inc. from May 2008 until October 29, 2008 when she voluntarily quit employment.

On October 21, 2008, a "mystery shopper" passed through the claimant's checkout line without emptying the cart or paying for the substantial amount of merchandise that the shopping cart contained. A security tape of the incident was reviewed and it appeared that Ms. Tam had at one point looked at the mystery shopper as the shopper passed by but did not stop the shopper or alert other store personnel. Because the employer felt the claimant's conduct was a breach of security, Ms. Tam was called to a meeting about the matter on October 23, 2008. The purpose of the meeting was to remind Ms. Tam to be watchful as a cashier. During the meeting Ms. Tam denied seeing the mystery shopper pass through her cashier line and Mr. Bormann, the Store General Manager, emphasized that it appeared that the claimant had looked directly at the shopper. At the conclusion of the meeting Ms. Tam was given a verbal warning and had

signed an acknowledgement that she had been verbally warned. The claimant continued reporting for work as scheduled.

On October 27, 2008, Ms. Tam reported to work late. As the claimant had been late five times within the 30-day period a meeting was held to address the claimant's tardiness. The employer decided not to impose discharge, although policy allowed for it, but instead suspended Ms. Tam for three days. At the conclusion of the October 28 meeting regarding her punctuality issues, the employer expected the claimant would return to work after the three-day suspension.

After considering the matter, Ms. Tam decided to quit her employment with Menard, Inc. based upon what she believed to be harsh treatment during the October 23 meeting regarding the mystery shopper. Ms. Tam believed that she had been "yelled at" during that meeting and, therefore, decided approximately five days later to quit her employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons stated herein the administrative law judge concludes that the claimant voluntarily quit her employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

The use of profanity or offensive language in a confrontational, disrespectful context may be recognized as misconduct even in the case of an isolated instance or situations in which the target of abusive name calling is not present when the statements are initially made. Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990).

Inasmuch as an employer can expect professional conduct and language from its employees, a claimant is entitled to a working environment without unreasonable conduct or name calling at the employee.

The evidence in this case, however, does not support the claimant's contention that she was treated unreasonably, yelled at or subjected to reasonable discipline regarding her conduct during a mystery shopper disciplinary meeting on October 23, 2009. The testimony of Mr. Bormann is corroborated by the testimony of Mr. Walter who was present at the time with individuals who verify that the claimant was not yelled at but only that the employer attempted to impart the importance of a cashier being alert to potential theft. The evidence also establishes that at the conclusion of the meeting Ms. Tam was issued only a verbal warning and that she signed an acknowledgement that she had been verbally warned. The evidence in the record establishes that Ms. Tam continued working for Menard for at least five more working days until

the claimant was given a three-day suspension for exceeding the company's tardiness infraction rule. The claimant at that time was given a three-day suspension in order to repair her transportation. The claimant was expected to return to work at the end of the suspension period. The claimant does not allege in the matter that she was treated inappropriately during the tardiness meeting with Mr. Walter, the Store's Friend and Manager.

Based upon the extended period of time that Ms. Tam continued to report to work following the October 23, 2008 mystery shopper meeting and the testimony in the record from individuals who were present at the meeting, the administrative law judge concludes that the claimant was not subjected to intolerable or detrimental working conditions. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated June 12, 2009, reference 01, is reversed. The claimant voluntarily quit employment without good cause attributable to the employer. Benefits are withheld until the claimant has earned ten times her weekly benefit amount in insured work, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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