

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN C HUITINK**  
Claimant

**APPEAL NO. 09A-UI-15678-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**Original Claim: 09/20/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 12, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 19, 2009. Claimant participated. Employer participated through general manager Lawrence Young. Employer's Exhibits 1 through 5 were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of 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 full-time as an electrical department manager and was separated on September 23, 2009. Mike Baker used to be claimant's assistant manager and then worked as assistant manager to plumbing manager T.J. Miller beginning in February 2009 before he voluntarily stepped down to a full-time hardware team member in mid-August. He sought a demotion from assistant manager to team member because of "not being able to deal with this issue in a professional manner." (Employer's Exhibits 4) Todd Good is current manager of the electric department now. Baker declined to apply for the position and could not have moved to a manager position without first moving to an assistant manager job. In June 2009 claimant reported that Baker verbally harassed him through other employees by telling them he was a horrible manager, was drunk, that he did not know how to run his department, that he (Baker) did all the work and claimant did not. Claimant and Baker worked opposite schedules. Management told claimant to ignore it and gave him no authority to discipline Baker for it. On September 18, 2009, Assistant General Manager Mike Mobauer reported that team member Mike Baker told him claimant intimidated and harassed him on a daily basis using communication radios. Baker had reported his concerns to Lawrence Young, Mike Mobauer, Tyler Gifford, and Jessi Heitman without result, and managers on duty who might have overheard did nothing in response. Employer had never advised claimant his job was in jeopardy because of his alleged treatment of Baker but suspended him pending investigation. Baker was allowed to work during claimant's suspension and he was allowed to

plead his case to other employees at the store according to Ryan Bircher, Tim Miller, and Sarah Freeman. Employer did not show claimant the investigatory witness statements prior to hearing. Freeman heard claimant say, "Oh, God" after hearing Baker was paged for customer assistance. (Employer's Exhibit 4) Leslie Irvine recalls him paging a hardware team member to provide assistance in the "pom pom aisle." Dustin Westra, Ryan Bircher, and Ryan Stickrod did not offer specific examples to support their generalized statements. Angie Wright wrote that when Baker offered to help claimant he told him he could take care of his own department. Molly Ramsey gave no detail of what she meant by "rude" or "bossy," but claimant did not yell because of the potential for customers being present. Plumbing Manager T.J. Miller heard stories about Baker and claimant bickering but had no personal observation and had not received complaints from Baker about being harassed. Dan Thomsen heard comments meant to belittle Baker and make it seem as if Baker was not providing good customer service by repeatedly telling him guests were waiting for assistance. (Employer's Exhibit 5) Employer took statements from Assistant Manager Matt Twombly and Contractor Sales Manager Tim Miller but did not present those to claimant or at hearing. People cannot always tell who is talking over the radio and when paging a department, and claimant was not paging a particular person, since he was not aware who was staffing the department on a given day or shift. Sometimes he had to page a department multiple times for multiple customers.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. While it is more likely than not that the claimant did treat Baker in a manner that he reasonably construed as harassment, employer was aware of the conduct via Baker's reports to management and did nothing to warn claimant or redirect his behavior. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

**DECISION:**

The October 12, 2009, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending September 26, 2009 shall be paid to claimant forthwith.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw