

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONY D HAMILTON**  
Claimant

**APPEAL NO. 10A-UI-06256-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 03/28/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 19, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 17, 2010. Claimant participated. The claimant was represented by John Spellman, attorney at law. Employer participated by Dennis Johnson, assistant general manager. The record consists of the testimony of Dennis Johnson and the testimony of Tony Hamilton.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a home improvement store located in Clive, Iowa. The claimant was hired on February 23, 2009, as a part-time employee. He received several promotions and was given the job of full-time grocery manager on October 11, 2009. He was terminated on March 30, 2010, for what the employer called “causing a scene” and swearing in front of customers.

The claimant does not know why he was terminated as he was not given an explanation on March 30, 2010. The claimant believes he was terminated because of an incident on March 26, 2010. The claimant was told by Dennis Johnson to get back to work. Some discussion took place and the claimant suggested that he be sent home. He clocked out and returned to work on March 30, 2010. The claimant denied that he ever used profanity.

## REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is little, if any, evidence of misconduct in this case. Mr. Johnson did not know the date on which the incident occurred that led to the claimant's termination and knew only what he read on the claimant's termination form. The individual that terminated the claimant, Mike Goode, did not testify at the hearing. The claimant testified that he did not know why he was terminated other than a complaint from a customer and a statement that he had used profanity. The claimant denied having used profanity. Mr. Johnson did not know what the claimant said or what the customer complaint was all about.

The employer had the burden of proof to show misconduct. There is insufficient evidence in this record to establish misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 19, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs