

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D HICKLE
Claimant

APPEAL NO. 13A-UI-10557-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 08/18/13
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.50(10) – Employer Participation

STATEMENT OF THE CASE:

The employer, Menard, filed an appeal from a decision dated September 13, 2013, reference 01. The decision allowed benefits to the claimant, Michael Hickle. After due notice was issued, a hearing was held by telephone conference call on October 9, 2013. The claimant did not participate but at his request his written statement was admitted as Exhibit A in lieu of his testimony. The employer participated by Assistant General Manager Kim Clark and was represented by Corporate Counsel Jessica Kong.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Michael Hickle was employed by Menard from February 14, 2012 until August 19, 2013 as a full-time second assistant department manager in the outside area. Employees who are going to be late or absent must contact the assistant general manager or the general manager. Only they can make schedule changes. If an employee wants to leave early the supervisor must give authorization. Mr. Hickle's supervisor was Assistant General manager Kim Clark.

Mr. Hickle left early without authorization on August 12, 15, and 19, 2013. He was absent without calling the general managers' office on August 13 and 16, 2013. The general manager and assistant general manager met with him on August 19, 2013, to ask about these issues. The claimant merely said he was having a "hard time emotionally" and had not been able to work. He did not have an explanation as to why he had not notified the general managers' office when he was going to miss work or to get permission to leave early. He did not ask for a leave of absence.

When General Manager Gus Gerken asked Mr. Hickle what he thought should be done, the claimant said he should be fired. The employer agreed and notified him he was fired.

Michael Hickle has received unemployment benefits since filing a claim with an effective date of August 18, 2013. The employer did participate in the fact-finding interview.

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.

Whatever the claimant's personal issues and problems may be been, he still had the obligation to give proper notification to the employer he was going to be absent or to seek permission to leave early. His contention he spoke with co-workers to say he was leaving or would not be in does not meet the requirements of company policy to notify the general managers. There is no indication the employer would not have been willing to give the permission but it was Mr. Hickle's failure to obtain such permission which made his absences unexcused.

He was discharged for unexcused absenteeism and leaving work without notification to managers. This is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault.

However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of September 13, 2013, reference 01, is reversed. Michael Hickie is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$3,510.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/css