

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GEOFFREY R DELIRA
217 E 6TH ST
OTTUMWA IA 52501

MENARD INC
1898 VENTURE DR
OTTUMWA IA 52501

GEOFFREY DELIRA
107 E 2ND ST #413
OTTUMWA IA 52501

Appeal Number: 05A-UI-07806-HT
OC: 07/03/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Geoffrey DeLira, filed an appeal from a decision dated July 21, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 16, 2005. The claimant participated on his own behalf. The employer, Menards, participated by Second Assistant General Manager Dan Wertz, Stock Team Member Darlene Hughes and was represented by Attorney Jennifer Geibel. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Geoffrey DeLira was employed by Menards from May 30, 2002 until June 29, 2005. He was a full-time team member.

The employer experienced problems with vandalism of the toilet paper dispensers in the men's restroom, profanities were being carved into the metal with a sharp object. The dispensers were all replaced in the beginning of June 2005, and the hallway in front of the restrooms was put under surveillance by a camera. The restroom was checked every hour to determine if any vandalism occurred, and when it was discovered, the dispenser would be replaced and the video tape for the previous hour would be checked.

Vandalism occurred on June 18, 28 and 29, 2005. The video showed that the only person who was in the men's restroom the hour before each of the vandalisms was discovered, on all three occasions, was Mr. DeLira. The length of his stay was anywhere from five minutes to 14 minutes on June 29, 2005.

General Manager Mike Goode brought the claimant to the office on June 29, 2005, to question him, explaining what the video cameras had shown. At first he denied being in the restroom that day, but when told he was seen on the camera, he admitted he was there but had not been in the stalls. When questioned why he had been in there for 14 minutes, he said he had not, but, again, the video tape records were explained to him, and he said he had been washing his hands and combing his hair. Mr. Goode then informed the claimant he had been in the restroom at the same time he had been, but had not seen Mr. DeLira at the sink or at the mirror. The claimant then admitted he might have been in the stalls.

The claimant was discharged for vandalism of the employer's property.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant has denied doing any vandalism to the employer's property, but had not been able to explain the extreme coincidence of him being the only person in the restroom the hour before each of the incidents was discovered. Nor has he explained why he feels the employer is fabricating a story about vandalism. The administrative law judge considers the employer to have met its burden of proof to establish a strong circumstantial case that the claimant entered the restroom and vandalized company property. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of July 21, 2005, reference 01, is affirmed. Geoffrey DeLira is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw