

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C BEHRENDT
Claimant

APPEAL NO. 08A-UI-09899-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 09/21/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Behrendt (claimant) appealed a representative's October 14, 2008 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Menard (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 10, 2008. The claimant participated personally. The employer participated by Nate Molstad, Plant Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 8, 1987, as a full-time production worker. The claimant signed for receipt of the employer's handbook which included the employer's Drug Policy on October 8, 2007.

The claimant submitted to a random drug test on September 16, 2008. The employer received the results on September 22, 2008. The claimant admitted smoking marijuana during the weekend prior to the test. The employer terminated the claimant on September 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer’s right by working for the employer, testing positive for an illegal substance and admitting to using an illegal substance. The claimant’s disregard of the employer’s interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative’s October 14, 2008 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant’s weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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