

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS N DICKMAN
Claimant

APPEAL NO. 10A-UI-12503-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 08/01/10
Claimant: Respondent (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 30, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 29, 2010. Claimant participated. Employer participated by Chris Havner, General Manager. The record consists of the testimony of Chris Havner and Thomas Dickman.

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 in this case is a Menard store, a retail home improvement store, located in Dubuque Iowa. The claimant was initially hired in March 1996. The claimant's last day of work was August 4, 2010. He was terminated on August 5, 2010. At the time of his termination, the claimant was human resources coordinator for the store.

On August 4, 2010, someone at the corporate office asked Chris Havner to look at the claimant's time schedules. The time schedules are printed out two weeks ahead of time. Corporate believed that the claimant was changing his time schedule after the schedules were printed. Corporate believed that the claimant, as human resources coordinator, needed to be available so that all team members could speak to him if necessary.

The employer had recently issued a new payroll program that would clock employees in at the register. There was also a new policy that if an employee clocked in more than five minutes before the scheduled start time that a reprimand would be issued. It was also necessary, on occasion, to adjust time schedules to meet the amount of money that could be spent on payroll. It was common practice to make adjustments to the schedule after it was printed to accommodate these situations. The claimant was never informed that what he and other

employees were doing was wrong. He was never reprimanded for any reason. He was terminated because corporate believed he had falsified company records.

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 disqualifies an individual from receiving unemployment insurance benefits 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 no evidence of misconduct in this record. Unknown individuals at corporate took the position that the claimant was changing his work schedule after it was printed, which constituted falsification of company records. The claimant credibly explained that employee schedules had to be changed after printing for a variety of reasons. He had no reason to believe that what he and other employees were doing was against policy or somehow constituted a falsification of records. The claimant was terminated without warning. The individuals who were concerned about the claimant's actions did not testify at the hearing. Since there is no evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 30, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css