

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L BORUFF
Claimant

APPEAL NO. 09A-UI-07133-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Menard (employer) appealed a representative's May 4, 2009 decision (reference 01) that concluded William Boruff (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 2, 2009. The claimant participated personally. The employer was represented by William Kelly, Store Counsel, and participated by Bob Richmond, General Manager; Mike Plautz, Shift Manager; and Mike Whittaker, Warranty Center Manager. The employer offered and Exhibit One was received into evidence.

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 March 25, 2008, as a full-time general laborer. The claimant signed for receipt of the employer's handbook. The handbook contains a progressive disciplinary policy. At the time the claimant was hired he told the employer he did not wish to work on Sundays because of his religious beliefs. The employer told the claimant that Sunday work would be assigned on a voluntary basis only. The claimant signed for receipt of the employer's handbook on March 25, 2008. The claimant had good evaluations and perfect attendance. The employer did not issue the claimant any warnings during his employment.

In September 2008, the employer told employees they would have to work every other Sunday. The claimant told the employer he did not wish to work on Sundays due to religious beliefs. The employer told the claimant he would have to work every Saturday. The claimant told the employer that he did not believe this was fair. Due to the economy, no employees were required to work on Sundays. The employer did not issue the claimant any verbal or written warning regarding his statements.

On April 6, 2009, the employer told the claimant he would have to work every other Sunday starting April 19, 2009. The claimant told the employer he did not wish to work on Sundays due

to religious beliefs. The employer told the claimant he would have to work every Saturday. The claimant told the employer that he did not want to work every Saturday but would give up his Tuesdays off and work every other Saturday. The employer terminated the claimant. The claimant was surprised because he thought he was negotiating a reasonable accommodation for his religious beliefs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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). A Seventh Day Adventist discharged for not working Saturdays did not commit job misconduct. Job Service cannot require an employee to choose between his religion and job insurance benefits. Sherbert v. Verner, 374 U.S. 398 (1963). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of

company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

DECISION:

The representative's May 4, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs