

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

RONNIE R CRESS
1226 GEORGE DR
MARION IA 52302

MENARD INC
4777 MENARD DR
EAU CLAIRE WI 54703

Appeal Number: 05A-UI-12704-CT
OC: 11/13/05 R: 03
Claimant: Respondent (2)

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 for Misconduct

STATEMENT OF THE CASE:

Menard, Inc. filed an appeal from a representative's decision dated December 16, 2005, reference 01, which held that no disqualification would be imposed regarding Ronnie Cress' separation from employment. After due notice was issued, a hearing was held by telephone on January 10, 2006. The employer participated by John Ryan, General Manager, and Matt Winkler, Assistant General Manager. The employer was represented by Jim McMenomy, Attorney at Law. Exhibits One through Five were admitted on the employer's behalf. Mr. Cress did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cress was employed by Menard, Inc. from July 17, 1996 until September 16, 2005. He was last employed full time on the board shed team. He was discharged because of what the employer felt were fraudulent returns.

The employer does not have a time frame by which merchandise must be returned. The only requirement is that the item returned be in "sellable" condition. If an individual does not have a receipt for the item being returned, he is given store credit. Mr. Cress had wanted to return a gas grill in July of 2005. He was reminded at that time that items could only be returned if they were in the original box and were in such a condition that they could be re-sold.

On September 15, 2005, Mr. Cress returned three floor-type heat registers and a security gate such as those used to restrain small children. He did not have receipts for the items and, therefore, received store credit in the amount of \$48.37. When the returned items were inspected before being put back on the shelves, it was determined that none of them could be re-sold. The security gate was visibly soiled. Of the floor registers, one had been painted and contained rust spots. It was also discovered that the registers he returned were not the ones that had come in the box he returned them in. The registers that had been in the box originally were \$7.03 each, the amount Mr. Cress was credited for each of the three. The registers that were in the box when Mr. Cress returned it were \$2.99 each. The employer felt Mr. Cress' returns were fraudulent and, therefore, discharged him on September 16, 2005. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cress was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Cress was discharged for making fraudulent returns. The return of the security gate was a questionable transaction and may have reflected only poor judgment in returning the soiled merchandise. However, the administrative law judge concludes that the return of the floor registers constituted a deliberate intent to defraud the employer. Given that at least one of the registers had been painted and had rust spots, Mr. Cress had to have known it could not be re-sold. One also has to wonder where the registers were that actually came in the box Mr. Cress returned to the store. It appears that he purchased new registers and returned his old ones in the box coded with the price of the newer, more expensive registers.

Even if Mr. Cress had returned the used registers in the proper box, he would still have cost the company \$8.97. The employer would have given him credit but would have been unable to recover the cost by re-selling the merchandise given its condition. As it turned out, Mr. Cress was given an additional credit of \$12.12 based on the difference in cost of the registers returned and those that were in the box originally. The fraudulent returns amounted to theft from the employer, conduct that is clearly contrary to the standards an employer has the right to expect. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

No overpayment results from this reversal of the prior allowance as Mr. Cress has not been paid benefits on his claim filed effective November 13, 2005.

DECISION:

The representative's decision dated December 16, 2005, reference 01, is hereby reversed. Mr. Cress was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw