

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID C JOHNSON
Claimant

MENARD INC
Employer

APPEAL 19A-UI-08166-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant, David C. Johnson, filed an appeal from the October 15, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 7, 2019. The claimant participated personally. The employer, Menard Inc., was represented by Paul Hammell, attorney at law. Curtis Clark and Michael Campbell testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits A-F were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant building materials millwork manager and was separated from employment on September 24, 2019, when he was discharged.

As a benefit of working for this employer, it allows its employees a 10% discount within the store. An employee would use their employee ID number to obtain the discount and the purchase would then be deducted from their paycheck. The employer’s discount policy states that purchases using the discount must be done off company time (Employer Exhibit A) and that the discount can be extended to spouses if the employee designates them to do so through a team member portal (Employer Exhibit A). The spouse would use a pin number rather than employee number to make purchases with the discount. The employer also has language on its ID badges alerting employees not to share information related to their employee ID number. The employer also has a written policy warning employees that falsification of company documents can result in termination (Employer Exhibit A). The claimant was made aware of the employer’s policies upon hire in 2014 and throughout employment.

The claimant was discharged for misuse of the employee discount policy. He had no prior warnings, but acknowledged the conduct for which he was discharged had occurred multiple times. On September 17, 2019 two cashiers alerted management to a transaction in which the claimant's cousin provided a slip of paper containing the claimant's employee ID number to obtain a discount on his transaction. The employer through its investigation confirmed that on September 17, 2019 and August 22, 2019 that the claimant was viewed through video footage interacting with his cousin, and providing his employee ID number to the cousin for the purpose of obtaining the claimant's discount. The employer estimated that the value of the discounts were \$8.00 and \$19.00 for which the customer was not entitled. The claimant admitted to the conduct and asserted he didn't know he could not share the discount or that it was not within his discretion to extend the discount to whomever he chose, beyond his spouse. He was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Abuse of an associate discount is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. The administrative law judge is persuaded the claimant knew or should have known that his employee discount was limited to him and a designated spouse, as clearly defined by the employer's policies. The administrative law judge did not find the claimant's denial of understanding the policy to be credible. It cannot be ignored that the claimant in his management position since 2014 would have had access to employer policies and was expected to enforce them amongst subordinates. When the claimant shared his discount with his cousin repeatedly, he allowed his cousin to obtain a discount from the store for which he was not entitled. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The October 15, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

jlb/scn