

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COSMIN BUDEA Claimant MENARD INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 12A-UI-02155-VS</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 01/15/12 Claimant: Appellant (2)</div>
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Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated February 22, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 11, 2012, in Davenport, Iowa. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Cosmin Budea and Claimant's Exhibit A.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked at the Menards store in Muscatine, Iowa, as the manager of the hardware department. He was hired on February 20, 2009. His last day of work was January 16, 2012. He was terminated on January 19, 2012, because he missed a corporate flight to Eau Claire, Wisconsin.

The claimant was supposed to attend a corporate meeting on January 17, 2012. He was given a memo which stated that he was supposed to be at the airport at 10:45 a.m. (Exhibit A) The claimant arrived at 10:40 a.m. He checked in and was told that the pilot thought everyone was present and the plane was loaded early. The pilot was called and he did not want to turn the plane around. The claimant then called his store manager and also corporate human resources.

The claimant offered to drive to the meeting but was told by the store manager to go home and come back to work the next day. He was later called by another assistant store manager and was told that he would be suspended for one week. The claimant again offered to drive to the meeting but was told that that was not an option. The claimant was then terminated for what he was told was insubordination. The claimant tried contacting human resources and each time

was told that the matter would be investigated and he would hear from them. No one ever called the claimant. He had had no prior disciplinary actions and had had perfect attendance.

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.

There is no evidence whatsoever of misconduct in this record. The claimant missed a flight to a meeting because the pilot left early and did not want to turn around. The claimant was supposed to be at the airport at 10:45 a.m. He arrived at 10:40 a.m. He was not late. He offered to drive to the meeting and was told by one store manager to go home and come back to work. A different store manager told the claimant later on that driving was no longer an option. He was then terminated. He had had a perfect attendance record and no disciplinary actions. There is simply no misconduct in this record. The employer did not participate in the hearing and the employer's reasons for terminating the claimant are unknown. Since the employer has not shown misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 22, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs