

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMMIE T WATTERS
Claimant

APPEAL NO. 14A-UI-04097-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03/23/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 10, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 8, 2014. Mr. Watters participated. The employer although duly notified did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Sammie Watters began employment with Menard, Inc. in September 2010. Mr. Watters was employed as a full-time production worker at the employer's cement block manufacturing facility and was paid by the hour. The claimant was discharged on July 26, 2013 after he exceeded the permissible number of attendance infractions allowed under company policy after he had been warned and suspended by the company for attendance infractions prior to his discharge.

The claimant was discharged after he exceeded the permissible number of attendance infractions allowed under Menard's no-fault attendance policy. Under the policy, employees are subject to discharge if they accumulate ten infraction points during a specified period of time. Under the policy the employee's oldest infraction point rolls off after 12 weeks.

Prior to being discharged, Mr. Watters had been warned about his unsatisfactory attendance on a number of occasions. The claimant was given a three-day suspension from work for excessive, unexcused absenteeism approximately two months before his discharge. Mr. Watters was placed on notice at that time that the employer considered his attendance at work to be unsatisfactory and that further attendance violations could result in his termination from employment.

The final incident that resulted in Mr. Watters' discharge from employment took place when Mr. Watters called off work on July 22 and July 23, due to lack of transportation, and when he called in on July 26 to report that he would be arriving at work late because of transportation issues. The claimant at that time was having domestic issues and had moved to a geographic area that was distant from his place of employment. The claimant had been placed on notice that his employment was in jeopardy because of excessive absenteeism. The claimant was scheduled to report to work at 2:30 p.m. during the time that his discharge from employment took place.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. In the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984), the Supreme Court held that absence due to matters of “personal responsibility,” such as transportation problems or oversleeping are considered unexcused.

The evidence in the record establishes that Mr. Watters had been absent from work on numerous occasions and that one of the primary reasons for the claimant’s absences was due to transportation issues. The evidence also establishes that Mr. Watters had been repeatedly warned by the employer and had been placed on a three-day suspension from work for excessive absenteeism, prior to the final incident that caused his discharge.

The final incidents that resulted in Mr. Watters’ termination from employment took place on July 22, 23, and 26, 2013. On those dates the claimant either did not report to work, or was going to report to work late because of transportation issues. The claimant was aware that it was his obligation to provide transportation to and from the work place and it is noted that the claimant’s beginning time was not until 2:30 p.m. The claimant was discharged when he continued to be absent from work or to report to work late due to transportation issues. These are matters of personal responsibility and within the claimant’s control.

For the above-stated reasons, the administrative law judge concludes the claimant’s discharge from employment took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 10, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs