

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY L SIMMONS
Claimant

APPEAL NO. 09A-UI-19513-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 11/15/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated December 21, 2009, reference 01 that held the claimant was discharged for excessive unexcused absenteeism on November 9, 2009, and benefits are denied. A telephone hearing was held on February 8, 2010. The claimant did not participate. Noah Mayer, Department Manager, participated for the employer. Official notice was the employer documentation (83 pages).

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant worked as a full-time general laborer from March 4, 2008 to November 9, 2009. The claimant was issued a final warning with a three-day suspension for excessive unexcused absences on September 8, 2009. The claimant was discharged on November 9 for being a no-call/no-show to work on November 7.

The claimant was not available when called for the hearing. The claimant called after the close of the record without a good cause (transportation issue) for being unavailable.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

- a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The administrative law judge concludes that the claimant failed to establish a good cause for missing the hearing.

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(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.

The administrative law judge further concludes that the employer has established misconduct in the discharge of the claimant on November 9, 2009, because of excessive "unexcused" absenteeism.

The employer put the claimant on notice in September 2009 that her job was in jeopardy due to a final warning and suspension based on excessive unexcused absences. The claimant had no good cause for failing to call in and report for work on November 7, and was discharged.

DECISION:

The decision of the representative dated December 21, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on November 9, 2009.

Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css