IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHY L DANIELS
Claimant

MENARD INC
Employer

APPEAL NO. 09A-UI-07921-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/19/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Menard, filed an appeal from a decision dated May 20, 2009, reference 02. The decision allowed benefits to the claimant, Kathy Daniels. After due notice was issued a hearing was held by telephone conference call on June 17, 2009 and concluded on July 1, 2009. The claimant participated on her own behalf and was represented by Bob DeKoch. The employer participated by Assistant General Manager Pete Prevenas and was represented by Store Counsel Michael O'Brien. Exhibit One, Two, Three, Four, Five were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kathy Daniels was employed by Menard from September 28, 1998 until April 21, 2009 as a full-time hardware department manager. Since becoming the department manager she received several warnings regarding failure to perform her job duties. The final warning was given on April 9, 2009, and was a seven-day suspension, and notified her that her job in jeopardy. Her performance did not improve at all, not even for a brief period of time, after any of these warnings.

During her suspension the condition of the department improved somewhat with pallets being unloaded and removed from the aisle, plant racks were built and inventory being stocked correctly. When she returned the pallets began to stack up again with the result that 22 pallets were on the floor several weeks after delivery. The area was in disarray and "unshoppable" by customers. While she seemed to be busy, the problems continued with no improvement at all. She was discharged by Assistant General Manager Pete Prevenas on April 21, 2009.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has certainly established the claimant did not perform her job duties as required, in spite of several warnings and a suspension.

Under the provisions of the above Administrative Code section, misconduct must be either willful and deliberate conduct or else negligence to such a degree as to constitute willful behavior. It is obvious from the claimant's testimony she was totally unqualified to do the job of department manager. In her own mind she was doing a good job and was not able to perceive the problems which were of such concern to the employer. Not even after any of the warnings did she do a better job. Inability to do the job to the employer's satisfaction does not constitute misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of May 20, 2009, reference 02, is affirmed. Kathy Daniels is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs