

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY J BROWN
Claimant

APPEAL NO. 14A-UI-02203-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 12/29/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 19, 2014, reference 03, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 19, 2014, by telephone conference call. The claimant participated personally. Employer participated by Zachary Deming, second assistant general manager, Marshalltown store. The record consists of the testimony of Zachary Deming; the testimony of Kimberly Brown; and Employer's Exhibits 1-5.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The employer is a home improvement store. The claimant worked at the store located in Marshalltown, Iowa. She was hired on November 12, 2013. She was a part-time morning stocker. Her last day of work was December 31, 2013. She was terminated on December 21, 2013.

The incident that led to her termination occurred on December 31, 2013. The claimant was instructed to put away a pallet of freight. The claimant refused to do the job. She had been previously warned about insubordination on December 5, 2013, and December 17, 2013. She was given a three-day suspension on December 17, 2013. The claimant knew her job was in jeopardy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The overwhelming weight of the credible evidence in this case is that the claimant refused to do certain parts of her job and willfully violated workplace rules and regulations. The claimant's testimony was not credible. For example, she could not remember having received prior disciplinary actions even though they were given only three or less months ago. She testified that she was not given a chance to explain that she had put away the freight but later admitted that she only put away part of the freight. Her testimony included contradictions and lack of memory that had no reasonable explanation. The administrative law judge concludes that there were countless incidents of insubordination that led to the claimant's termination. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated February 19, 2014, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs