

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CURT R HATTON**  
Claimant

**APPEAL NO. 09A-UI-16104-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 09/27/09**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Curt Hatton, filed an appeal from a decision dated October 21, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 2, 2009. The claimant provided a telephone number where he could be contacted and was called at that number for the hearing. Before the hearing could begin he lost the connection and three attempts by the administrative law judge to reconnect were unsuccessful. By the time the hearing ended at 10:13 a.m. the claimant had not contacted the Appeals Section to request to participate. The employer, Menard, participated by General Manager Brian Krysl, Front End Manager Robert McAvoy and was represented by Corporate Counsel Tiffany Neeley.

**ISSUE:**

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

**FINDINGS OF FACT:**

Curt Hatton was employed by Menard from November 15, 2007 until September 21, 2009 as a part-time member of the courtesy patrol. His job was to assist customers to take purchases to their vehicles and to bring carts from the parking lot back into the store and other duties as assigned. He had received two written warnings in 2008 for “bad attitude” and refusing to perform his work duties. The final warning given June 8, 2008, imposed a three-day suspension and notified him his job was in jeopardy if there were any further incidents.

On September 21, 2009, the claimant was retrieving carts in the parking lot along with another courtesy patrol member. That other person was called into the store to help customers and the claimant became angry because he did not feel it was fair to leave him in the parking lot to do the carts by himself. He refused to bring in the carts or to answer his radio when he was called to assist at the front end.

Front End Manager Robert McAvoy went to the parking lot and brought the claimant inside. Mr. Hatton said he was upset and did not think it was fair he had to stay out in the parking lot.

General Manager Brian Krysl also met with the claimant and reminded him of the prior written warnings for attitude and refusal to do his job. The employer reminded the claimant his refusal to do his work was insubordination and he still refused to return to his work duties. He was discharged at that time.

**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 claimant had been advised his job was in jeopardy as a result of his insubordination and refusal to perform his work duties. In spite of that warning he again refused to perform the essential functions of his job on September 21, 2009. His belief it was "unfair" that another patrol member should be summoned inside while he was left to bring in the carts is unreasonable. His refusal to follow the instructions of his supervisor is insubordination. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of October 21, 2009, reference 01, is affirmed. Curt Hatton is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs