

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN M KASNER
Claimant

APPEAL NO. 10A-UI-00210-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 12/06/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Justin Kasner filed an appeal from a representative's decision dated December 30, 2009, reference 01, which denied benefits based on his separation from Menard, Inc. After due notice was issued, a hearing was held by telephone on February 15, 2010. Mr. Kasner participated personally. The employer participated by Brian Sampson, General Manager, and was represented by Maureen Cosgrove, Store Counsel.

ISSUE:

At issue in this matter is whether Mr. Kasner was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kasner was employed by Menard, Inc. from May 15, 2007 until November 28, 2009. He last worked 15 to 20 hours each week in building products. He was discharged because of repeated tardiness in reporting for work.

Mr. Kasner was 6 minutes late on October 15, 2009; 13 minutes late on October 17; 8 minutes late on November 3; and 6 minutes late on November 17. He received a verbal warning on October 15, a written warning on November 3, and a three-day suspension on November 17. The tardiness of October 17 and November 3 was due to car trouble. The remaining two incidents were due to traffic and his school attendance. The decision to discharge Mr. Kasner was due to the fact that he was 34 minutes late on November 28 because he misread his work schedule. His tardiness was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified

from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Kasner accumulated five occasions of tardiness during a period of approximately six weeks. All of the tardiness was due to matters of purely personal responsibility and are, therefore, all unexcused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Kasner was amply warned that his tardiness was jeopardizing his continued employment with Menard, Inc. In spite of the warnings, he did not take those steps necessary to ensure his timely arrival at work.

The administrative law judge considers five periods of unexcused tardiness during a period of six weeks to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, Mr. Kasner is disqualified from receiving benefits.

DECISION:

The representative's decision dated December 30, 2009, reference 01, is hereby affirmed. Mr. Kasner was discharged by Menard, Inc. for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css