

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C LEACH
Claimant

APPEAL NO: 12A-UI-13585-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 10/21/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 8, 2012, reference 01, that held he was discharged for misconduct on October 23, 2012, and benefits are denied. A telephone hearing was held on December 12, 2012. The claimant participated. Andrew Maw, Assistant GM, and Paul Hammell, Legal Counsel, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time carry-out worker on May 5, 2009, and last worked for the employer on October 23, 2012. The employer provided claimant with the non-harassment policy.

A female worker reported to the employer in April 2012 with a complaint about the claimant. She did not want to get him in trouble but she did not like him calling her sexy, touching and hugging her. The employer had a conference with claimant about the complaint and referred to the employer policy. He was given a verbal warning to refrain from any further conduct. The policy states harassment behavior can result in termination.

A female employee reported to her supervisor on October 22 that claimant had harassed her. The employer watched a video showing claimant approaching her from behind touching her on the small of her back and getting close to her face. The female appeared to be uncomfortable because she looked away. She reported claimant had said things to her like you have bedroom eyes, beautiful, sweetie, and gorgeous.

The employer confronted claimant on October 23 about the incident the day before with a statement of seeing the video. Claimant admitted he used references to females other than by

name as a show of respect but denies harassment. The employer discharged claimant for violation of the non-harassment policy regarding the recent incident in light of the prior warning.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on October 23, 2012.

The claimant received the non-harassment policy and he was given a verbal warning that his conduct toward a female worker with verbal comments and touching was a violation. He was put on notice to refrain from further conduct of this nature or he could be terminated.

The employer received a further female harassment complaint that it verified by watching video of the incident that shows claimant approaching her in an inappropriate manner. Claimant minimized the sexual references in this hearing by denying in part and otherwise stating that it was his "culture" to use this terminology. Since he had the policy and was warned about this type of conduct his repeated behavior as reflected by the recent incident is a deliberate violation that constitutes job disqualifying misconduct.

DECISION:

The department decision dated November 8, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on October 23, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css