

IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DIANA E GILLIS
Claimant

APPEAL NO. 07A-UI-05103-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 04/15/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Diana E. Gillis (claimant) appealed a representative's May 7, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Menard, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2007. The claimant participated in the hearing with her attorney, Monty Fisher. Jason Kuiper appeared on the employer's behalf. Steve Sargent, the general manager, and Jana Bartlett, the claimant's supervisor, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 17, 1998. The claimant worked full time. She most recently worked as a sales associate in the plumbing department. The employer has a policy that prohibits harassment at work.

On April 15, 2007, the claimant and another associate, Chad, were stocking shelves with plumbing fittings. After Chad took the cap off a fitting, he put it on top of his head and made a remark that he now looked like a Jew. The claimant responded that she hated N-----, Jews and bigots. The claimant was not serious when she made the remark, but Bartlett overheard her comment and told the claimant not to make this type of comment again when she on the floor. Bartlett informed Sargent about the comment.

Although there were no customers in the immediate area and no one complained, Sargent discharged the claimant because he considered her comment a racial slur. The employer does not tolerate such remarks. Although the claimant's job was not in jeopardy prior to April 15, the employer discharged the claimant for this one comment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The claimant used extremely poor judgment and taste when she responded to Chad's statement. If a customer had heard the comment, the customer could have been offended. Under the facts of this case, the claimant's April 15 isolated comment, while inappropriate, does not rise to the level of work-connected misconduct. Therefore, as of April 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 7, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css