

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NOELIA ABREGO-SMITH
1640 QUAIL HOLLOW NE #7A
CEDAR RAPIDS IA 52402

MENARD INC
2800 WILEY BLVD SW
CEDAR RAPIDS IA 52404

Appeal Number: 04A-UI-00310-HT
OC: 11/30/03 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Menard, filed an appeal from a decision dated December 31, 2003, reference 01. The decision allowed benefits to the claimant, Noelia Abrego-Smith. After due notice was issued a hearing was held by telephone conference call on February 23, 2004. The claimant participated on her own behalf. The employer participated by General Manager Gus Gerken and was represented by Attorney James McMenomy.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Noelia Abrego-Smith was employed by Menard from February 4 until December 1, 2003. She was a full-time human resources coordinator.

On October 23, 2003, the claimant was given a warning by General Manager Gus Gerken for poor work performance. She was not completing tasks she had been assigned. Many of these were very important as they dealt with changes in payroll status, schedule changes, time card corrections, and maintaining documents which the employer was required by law to have. In addition, she had represented several times that her work was complete and up to date when it was not. Mr. Gerken advised her that her job was in jeopardy.

On Saturday, November 29, 2003, the claimant was scheduled to work and asked to leave early. Mr. Gerken told her she could once all her tasks were completed. At 10:30 a.m. Ms. Abrego-Smith stated all her filing was done and she was allowed to leave. However, the general manager then discovered a large amount of documents in the file drawer and the claimant's desk drawer, which had not been filed. On December 1, 2003, she was removed as human resources coordinator.

Noelia Abrego-Smith has received unemployment benefits since filing a claim with an effective date of November 30, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her poor work performance and misrepresentation. In spite of the warning, she continued to represent to the employer that her work was done and up to date when it was not. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 31, 2003, reference 01, is reversed. Noelia Abrego-Smith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$3,295.00.

bgh/b