



Department of Inspections,
Appeals, & Licensing

Iowa Department of Inspections, Appeals, & Licensing
Administrative Hearings Division
6200 Park Avenue, Suite 100, East Entrance
Des Moines, IA 50321-1270

Appeal Decision

Claim Number:
[REDACTED]

Determination Number:
7530157

Appeal Filed By:
KEMBERLY McElderry

Appeal Filed Date:
01/30/2026

Appeals Bureau Docket:
2026001563-AT



APPEALS DECISION ORDER

Mail Date: March 30, 2026

Appellant

Claimant/Job Seeker: KEMBERLY McElderry
Claimant address: [REDACTED]

Appellee

Employer: Menard Inc

Social Security Number: [REDACTED]

In regard to the appeal by KEMBERLY McElderry:

STATUTORY REFERENCE

DECISION/REMAND

Iowa Code § 96.5(2)a - Discharge for Misconduct

Iowa Code § 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 29, 2206, unemployment insurance decision that denied benefits based upon failure to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2026. Claimant Kemberly McElderry participated and testified. Employer Menard, Inc. participated through Doug Yeoman. No exhibits were submitted. Official notice was taken of the underlying agency file.

Equal Opportunity:

Auxiliary aids and services are available upon request to individuals with disabilities. For deaf and hard of hearing, use Relay 711.



ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant, Kemberly McElderry became employed with Menard, Inc., in March 2025 as a part-time cashier. She was terminated on January 16, 2026, for failing to properly scan all of the items from a customer on January 16, 2026. She was terminated the same day.

Mr. Yeoman testified live and under oath for the employer. He is the General Manager at the Ottumwa location. He testified that the employer terminated Ms. McElderry's employment on January 16, 2026, after taking her through the employer's progressive discipline policy. She had been suspended previously on January 2, 2026, and provided a written warning for the same conduct on April 4, 2025. Prior to that, he testified she received an undocumented verbal warning. He acknowledged that the employer's assessment of the error was that it was a mistake which he described as a "common error" rather than any deception or theft.

Ms. McElderry testified live and under oath as well. She testified that she understood the progressive discipline policy should have included a documented verbal warning, two written warnings and a suspension, prior to termination. She testified that she was not shown any proof that she had neglected to scan an item prior to her termination on January 16, 2026. At the time of her termination, she testified she asked to see documentation of her verbal warning and denied that she had received one. The employer told her there is no such documentation for a verbal warning, which is confirmed by Mr. Yeoman's testimony at hearing. She testified that the store was very busy and understaffed at the beginning of January 2026, and acknowledged she may have made a mistake.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

....

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual’s employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer’s property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual if compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.



(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

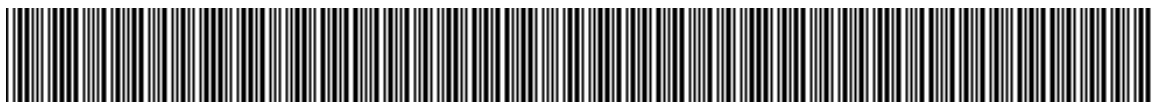
(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988).

"[M]ere negligence is not enough to constitute misconduct." *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." Iowa Code § 96.5(2)(d). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

When an employee's discharge is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct. App. 2016) (quoting Iowa Admin. Code r. 871-24.32(1)(a) (current version at Iowa Admin. Code r. 871-24.24(1)).

In this case, Ms. McElderry was terminated for carelessness and poor work performance. She made at least three scanning or cashiering mistakes inside of one year. The IWD decision found



that she was capable of not making these mistakes such that it manifested a wrongful intent on the part of the claimant. I find that is not proven here in this record. The General Manager described her final mistake as a “common error.” Ms. McElderry testified that in early January 2026, the store was understaffed and quite busy when the alleged errors occurred. At worst, the defendants have shown some level of negligence. The claimant is eligible for benefits.

DECISION:

The January 29, 2026, unemployment insurance decision is REVERSED. There was no disqualifying separation with this employer. The claimant is allowed benefits, provided they remain otherwise eligible.



Joseph WALSH
Administrative Law Judge
Iowa Department of Inspections, Appeals, & Licensing
Administrative Hearings Division
Unemployment Insurance Appeals Bureau

Please see the last page of this document for important information about reopening the appeal and further appeal rights.



INSTRUCTIONS FOR FILING AN APPEAL

If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
Online: IowaWORKS account

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

1. A reference to the decision from which the appeal is taken.
2. That an appeal from such decision is being made and such appeal is signed.
3. The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code 17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17a.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Iowa 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.

Note to Claimant: It is important that you file your weekly claim as directed, while the appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.



Babel Notice – Claim and Appeal Information

Aviso: Aviso: Documento De Beneficios Del Seguro De Desempleo
Y Información De Apelación

IMPORTANT!

This document contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document. **DEADLINE FOR APPEAL:** If you disagree with this determination or decision, you must file an appeal before the deadline noted in this document. **IMMEDIATELY:** If needed, call 866-239-0843 for assistance in the translation and understanding of the information in the document(s) you have received.

¡IMPORTANTE!

Este documento contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento. **PLAZO LÍMITE PARA APELAR:** Si usted está en desacuerdo con esta determinación o decisión, debe presentar una apelación antes del plazo límite indicado en este documento. **INMEDIATAMENTE:** Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 866-239-0843.

重要提示！

这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。

上诉截止日期：如果您不同意本裁定或决定，您必须在本文件所载截止日期前提出上诉。**立即：**如果需要，请拨打866-239-0843，可获得帮助，以利您翻译和理解所收到的文件中的信息。

IMPORTANT!

Ce document contient des informations importantes sur vos droits d'allocation de chômage, vos responsabilités et/ou vos bénéfices. Il est indispensable que vous compreniez le contenu de ce document. **DATE LIMITE POUR FAIRE APPEL:** Si vous n'êtes pas d'accord avec cette détermination ou décision, vous devrez faire un appel avant la date limite signalée dans ce document. **IMMÉDIATEMENT:** Si nécessaire, téléphonez au 866-239-0843 pour avoir de l'assistance sur la traduction et/ou la compréhension de ce document.

WICHTIG!

Diese Dokument enthält wichtige Hinweise zu ihren Rechten, Pflichten bzw. Leistungen im Rahmen der Arbeitslosenunterstützung. Es ist entscheidend, dass Sie die Informationen in diesem Dokument verstehen. **FRIST ZUR BESCHWERDEEINLEGUNG:** Wenn Sie mit der Feststellung oder Entscheidung nicht einverstanden sind, müssen Sie vor Ablauf der in diesem Dokument aufgeführten Frist eine Beschwerde einlegen. **SOFORT:** Sofern erforderlich, rufen Sie die Telefonnummer 866-239-0843 an und erkundigen sich nach Hilfsdiensten bei der Übersetzung und zum Verständnis der Informationen in dem (den) von Ihnen erhaltenen Dokument(en).

IMPORTANTE!

Ang mga dokumentong ito ay naglalaman ng mahalagang impormasyon tungkol sa iyong mga karapatan na makatanggap ng kabayaran, mga responsibilidad at /o benepisyo dahil sa pagkawala ng trabaho. Napakahalagang maunawaan mo ang mga impormasyong nilalaman sa dokumentong ito. **HULING ARAW PARA UMAPILA:** Kung hindi ka sumasang-ayon sa pagpapasiya o desisyon, dapat kang maghabol o magharap ng apila bago dumating ang huling araw na nabanggit sa dokumentong ito. **KAAGAD:** Kung kinakailangan ang tulong, tumawag sa 866-239-0843 para sa pagsasalin ng wika at pag-unawa ng impormasyon sa mga dokumentong natanggap mo.

IMPORTANTE:

Questo documento contiene informazioni importanti sui Suoi diritti di indennizzo di disoccupazione, sulle sue responsabilità e i suoi benefit. E' cruciale che Lei comprenda appieno le informazioni contenute in questo documento. **SCADENZA PER IL RICORSO:** Se non si trova in accordo con questa determinazione o decisione, dovrà presentare ricorso prima della scadenza riportata nel presente documento. **INMEDIATAMENTE:** In caso di necessità chiami il 866-239-0843 per assistenza alla traduzione e comprensione delle informazioni contenute nei documenti ricevuti.

QUAN TRỌNG:

Tài liệu này chứa đựng tin tức quan trọng về quyền hạn, trách nhiệm và/hoặc những lợi ích được đền bù trong khi thất nghiệp. Đó là điều tối cần thiết mà quý vị phải hiểu rõ những tin tức trong tài liệu này. **HẠN CHÓT KHIẾU NẠI:** Nếu quý vị không đồng ý với quyết định này, quý vị phải nộp đơn khiếu nại trước hạn chót ghi rõ trong tài liệu này. **MỘT CÁCH NHANH CHÓNG:** Nếu cần xin hãy gọi số 866-239-0843 để được giúp đỡ trong việc phiên dịch và hiểu rõ những tin tức trong tài liệu quý vị đã nhận.

중요!

이 문서는 실업보상 권리, 책임 및/또는 혜택에 대한 중요한 정보가 포함되어 있습니다. 이 문서에 있는 정보를 이해 하는 것은 매우 중요합니다. **항소 마감:** 이 결정에 이견이 있으시면 항소인은 문서에 언급된 마감일 전에 항소를 제기하셔야 합니다. **즉시:** 받으신 문서의 번역 및 이해를 위해서 도움이 필요하시면 866-239-0843 로연락을 하시기 바랍니다.

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Dokumenty mogą zawierać ważne informacje o Pana(-i) prawach do zasiłków dla bezrobotnych, obowiązków i/lub świadczeń. Zrozumienie informacji zawartych w niniejszym dokumencie jest bardzo ważne. **DATA WYGAŚNIĘCIA TERMINU SKŁADANIA ODWOŁAŃ:** Jeśli nie zgadza się Pan(-i) z decyzją zawartą w niniejszym dokumencie, odwołanie należy złożyć przed datą wygaśnięcia terminu wyszczególnionego w treści niniejszego dokumentu. **NATYCHMIAST:** W razie potrzeby, należy dzwonić pod 866-239-0843 w celu uzyskania pomocy w tłumaczeniu i zrozumieniu informacji w dokumentach, które Pan(i) otrzymał(-a).

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Данный документ содержит важную информацию о Ваших правах на пособие по безработице, ответственностях и /или выгодах. Крайне важно, чтобы Вы поняли всю информацию, представленную в данном документе(ах). **КРАЙНИЙ СРОК ДЛЯ ОБЖАЛОВАНИЯ:** Если Вы не согласны с представленным постановлением или решением, Вы должны подать заявление на обжалование данного документа до крайнего срока, указанного в нём. **НЕМЕДЛЕННО:** При необходимости звоните 866-239-0843 для получения помощи в переводе и понимании информации данного документа(ов).

VAŽNO!

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ໝາຍເຫລາະສາ

ສໍາຄັນ! ເອກະສານນີ້ປະກອບດ້ວຍຂໍ້ມູນທີ່ສໍາຄັນກ່ຽວກັບສິດທິການຊົດເຊີຍການຫວ່າງງານ, ຄວາມຮັບຜິດຊອບ ແລະ/ຫຼືຜົນປະໂຫຍດຂອງທ່ານ. ມັນເປັນສິ່ງ ສໍາ ຄັນທີ່ທ່ານຕ້ອງເຂົ້າໃຈຂໍ້ມູນໃນເອກະສານນີ້. ກໍານົດເວລາການອຸທອນ: ຖ້າທ່ານບໍ່ເຫັນດີກັບການກໍານົດ ຫຼືການຕັດສິນໃຈນີ້, ທ່ານຕ້ອງອໍ້ນອຸທອນກ່ອນກໍານົດເວລາທີ່ລະບຸໄວ້ໃນເອກະສານນີ້. ທັນທີ: ຖ້າຕ້ອງການ, ໃຫ້ໃບຫາ 866-239-0843 ສໍາລັບການຊ່ວຍເຫຼືອໃນການແປ ແລະຄວາມເຂົ້າໃຈຂອງຂໍ້ມູນໃນເອກະສານທີ່ທ່ານໄດ້ຮັບ.

هام!

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