

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL E WRIGHT**  
Claimant

**APPEAL NO. 13A-UI-01466-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 01-06-13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 1, 2013, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on March 27, 2013 at Ottumwa, Iowa. The claimant did participate and was represented by Garold F. Heslinga, attorney at law. The employer did participate through Patrick Plaehn, General Manager, Lindsay Sandifer, Human Resources Coordinator, and Andy Maw, Assistant General Manager. Employer's Exhibits One through Three were entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at Menards as a morning stock team member part time beginning August 27, 2008 through January 7, 2013 when he was discharged. Justin Ruby, a co-worker of the claimant's went to Mr. Plaehn the morning of January 7 to complain about the claimant choking him. The claimant put his hand around Mr. Ruby's neck and attempted to choke him. Mr. Ruby made the complaint about 8:00 a.m. directly to Mr. Plaehn. Mr. Plaehn immediately called the claimant into the conference room. Present for the meeting were Mr. Ruby, the claimant, Mr. Maw and Ms. Sandifer. During the meeting the claimant admitted that he had put one hand around Mr. Ruby's neck while out in the yard. The claimant alleged that he was provoked by Mr. Ruby allegedly saying "I don't know why we have morning stock, they never do anything." Mr. Ruby never physically touched the claimant. Mr. Ruby was discharged for making the comment as he had been previously warned for the same or similar behavior. The employer's handbook or policy book, a copy of which had been given to the claimant provides a zero tolerance policy for physical assault of a coworker. During the initial meeting the claimant never alleged that Mr. Ruby had physically threatened him. Mr. Maw, Mr. Phaehn and Ms. Sandifer all confirmed what the claimant said and failed to say during the initial investigatory meeting. The claimant only alleged that Mr. Ruby had threatened him after he had been discharged. During the initial meeting the claimant never alleged that Mr. Ruby used profanity or that he threatened him with physical harm.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is axiomatic under the law that mere words can never justify assault. Even if the administrative law judge did believe that Mr. Ruby threatened the claimant, and no such finding is made, the claimant was not physically attacked and had no right to choke Mr. Ruby. The claimant had been given a copy of the employer's handbook and knew or should have known that physically choking another employee was unacceptable. During the initial meeting the claimant never made allegations that Mr. Ruby physically threatened him, he only made up that after his discharge in order to justify his physical attack on a co-worker. The claimant's physical assault on Mr. Ruby is substantial misconduct sufficient to justify denial of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The February 1, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs