

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW W KUBICEK
Claimant

CENTRO INC
Employer

APPEAL 15A-UI-10531-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 17, 2015, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 1, 2015. Claimant participated. Employer participated through business process leader Jerry Wille, business process support worker Chris Sosa, human resource director Rhonda Griffin and human resources generalist Tracy Lennon. Employer's Exhibit 1 was received.

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 was employed full-time as an assistant machine operator and was separated from employment on August 24, 2015, when he was discharged. Sosa noticed claimant failed to use a protective glove while using a double edged trimmer to cut a part. Sosa yelled "hey" and signaled a motion to put a glove on his left hand. Claimant made eye contact and continued with what he was doing, picked up another knife and continued cutting the part without a glove so Sosa reported the matter to Wille. Claimant was aware he was not wearing a glove when Sosa motioned to him but decided to finish without a glove because there was time-sensitive work and he was running behind.

All employees are trained from the first day to use a Kevlar cutting glove when using a sharp tool. (Employer's Exhibit 1) Claimant was trained on April 19, 2010, and training was verified November 8, 2011. The employer had not previously warned claimant his job was in jeopardy for any similar reasons. When confronted, claimant became irate and belligerent, blamed the adequacy of the glove, called the safety rules "stupid," and said he had worked there five years without an injury. His demeanor was such that the employer believed he would not follow safety rules going forward so discharged him rather than giving a written warning.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Even though the claimant was not hurt, the employer's safety policy was implemented for the safety of its employees. The claimant made the decision to violate the employer's safety policy rather than pause to put on a glove when Sosa reminded him. This was a deliberate decision to ignore the safety policy, which is disqualifying misconduct.

DECISION:

The September 17, 2015, (reference 02) unemployment insurance 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css