

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS E BURKHART
Claimant

APPEAL NO. 09A-UI-01553-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAND FX BODY CO
Employer

**OC: 12/21/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.28(6) – Previously Adjudicated Issue

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 29, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 19, 2009. Claimant participated personally. Employer participated by Dick Arndorfer, Welding Supervisor and Janiece Runge, Human Resources. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct and whether the issue was previously adjudicated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 19, 2008.

Claimant was discharged on November 20, 2008 by employer because claimant made a threatening remark at work: "I should just get a gun and shoot everybody." Claimant was blowing off steam and did not think anyone would take him seriously. Claimant had anger issues at the workplace in the past. Employer did not issue any prior warnings for the prior incidents. Employer discharges for workplace violence and harassment on the first offense.

This matter was adjudicated in a fact finding decision dated January 29, 2009 reference 01 for the prior claim year December 23, 2007 and in appeal decision 09A-UI-01552-M-T.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

In this matter, the evidence has established that the claim was previously adjudicated by decision of January 29, 2009 reference 01. The bureau is without authority to rehear this matter as a decision was issued on the merits in file number 09A-UI-01552-M-T. The issue cannot be adjudicated a second time.

DECISION:

The decision of the representative dated January 30, 2009, reference 01, is affirmed. The decision in this matter is moot as the issue was previously adjudicated. The prior decision is controlling on the issue.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs