

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARCUS M MCCUTCHAN**  
Claimant

**A-LERT**  
Employer

**APPEAL 15A-UI-00762-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 16, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 11, 2015. The claimant participated. The employer participated through Brenda Wooten, and Terry Geary also testified. Employer Exhibits A through D were admitted.

**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: The claimant was employed full-time as a laborer and was separated from employment on December 22, 2014 when he was discharged for repeated safety violations.

The final incident occurred on December 19, 2014 when the claimant was working twenty five feet in the air. Per safety policies, if an employee is elevated he is to clear the space below him of people and make sure it is all clear before performing work. The claimant worked with an industrial hammer that could have been dropped on the welder below him. Based on this incident and his history of safety violations, he was subsequently discharged (Exhibit A).

The claimant had been previously counseled on multiple occasions and specifically on more than one occasion about dropping items. The claimant was suspended for two days on October 29, 2014 for his failure to follow safety procedures (Exhibit B). He was also warned on November 19, 2014 for dropping a piece of grating (Exhibit C). At no time, did the claimant comment in the section marked "employee response" to justify or explain the circumstances leading to the corrective action, if he disagreed with it. The claimant was aware of the employer's policies when trained at the time of hire, based on ongoing training meetings and through prior disciplinary actions.

## 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).

The employer has presented substantial and credible evidence that claimant repeatedly disregarded the employer's safety policies and procedures. The employer has a duty to protect the safety of its employees. The claimant's repeated disregard of safety procedures was contrary to the best interests of the employer and the safety of his coworkers. Benefits are denied.

**DECISION:**

The January 16, 2015 (reference 01) 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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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