IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DON B CAMPBELL
Claimant

MIDAMERICAN ENERGY COMPANY
Employer

APPEAL NO. 10A-UI-13189-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08-22-10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 16, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 10, 2010. The claimant did participate. Also participating on behalf of the claimant as Don Krause, Business Manager for IBEW local 499 and was represented by Jay Smith, Attorney at Law. The employer did participate through Brad De Boer, Senior Labor and Employee Relations Representative and was represented by Peg Roy, Attorney at Law. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an electrical technician full time beginning November 3, 1980 through August 19, 2010 when he was discharged. On Friday April 30, the claimant was in the break room with his coworkers when he threw an apple or apple core at another coworker, Jeff, striking Jeff on the back of the neck behind his ear hard enough to leave a mark. Two other coworkers' complained to management about the situation on the next working day, Monday May 3. On Monday, May 3, the claimant reported to work but left work early after reporting to his supervisor that he needed to see his doctor because he was ill. The claimant was off work for mental health treatment from May 3 until August 15 when he was released to return to work by his physician. The employer notified the claimant on May 3 that he was being suspended pending their investigation of the apple throwing incident of April 30. The employer could not complete their investigation, including interviewing the claimant, until the claimant was able to return to work for his pre-disciplinary hearing on August 18, after he had been released by his doctor.

The claimant had been given a warning on March 10, 2010 that put him on notice that his job was in jeopardy and any further rule or policy violation would lead to his discharge. The claimant admits that he knew that horseplay was not allowed in the workplace either under the

union contract or under the employer's code of conduct rules. The claimant was well enough mentally to report to work on April 30.

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 reasonable for an employer to prohibit horseplay and any act of physical violence between coworkers. The claimant knew the rules and had been warned that his failure to follow all policies would result in his discharge. At least two other employees were concerned enough about the event to report it to management. The claimant's deliberate violation of the rules against violence in the workplace and the prohibition against horseplay are evidence of misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The September 16, 2010 (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

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