

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BLAKE A MATHES**  
Claimant

**CENTRO INC**  
Employer

**APPEAL 16A-UI-02736-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 22, 2016 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 30, 2016. The claimant participated personally. The employer participated through Tracy Lennon, HR generalist. Mike Steffens also testified for the employer.

**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 machine operator and was separated from employment on January 26, 2016; when he was discharged.

The employer has a policy regarding associates that prohibits damaging property or misusing employer tools and equipment. The claimant was made aware of the employer's policy upon hire. The claimant was issued a written warning on March 25, 2015 for punching holes in fixtures while upset, and a final written warning on July 24, 2015 after throwing buckets and scrapers while upset. On January 25, 2016, the employer was reported for using an air wand to shoot metal inserts at his co-worker. The undisputed evidence is that there is no business purpose or reason why the claimant would need to put metal inserts in the air wand. The employer reported the metal inserts were approximately ½ to 1 inch in length and while the claimant was shooting, he hit another employee. The claimant estimated he was shooting his co-worker approximately 70 feet away and shooting in retaliation to being shot at first. The co-worker who also shot was disciplined in the form of a final warning but not discharged because it was his first offense. The claimant was discharged because of his two prior warnings.

**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.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

In this case, the claimant knew or should have known his job was in jeopardy based on his prior warnings for improper use of company equipment. The claimant's actions on January 25, 2016 of trying to intentionally strike a co-worker with metal pieces by shooting them in an air wand that had such force it could project an item over 70 feet were contrary to standards any employer's best interest, as well as the employer's explicit policy that forbids misuse of company property. The administrative law judge is not persuaded by the claimant's assertion that his actions were mitigated in response to the co-worker shooting first, nor was the policy disparately applied to the claimant, given his history. The claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Benefits are withheld.

#### **DECISION:**

The February 22, 2016 (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. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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