

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE S GREEN
Claimant

APPEAL NO. 08A-UI-07599-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 07/27/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 19, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 8, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a pallet jack driver for the employer from March 2004 to July 29, 2008. On July 29, 2008, the claimant had a conflict with a coworker because the coworker repeatedly was taking plastic covers for pallets out of the claimant's work area instead of using the ones he was supposed to use. The claimant had retrieved a cover from the coworker and told him not to take the claimant's covers. The coworker ignored the claimant and attempted to take another cover from the claimant's area. The claimant grabbed the cover, and both of them were tugging on the cover. The claimant then punched the coworker with his fists.

On July 29, 2008, the employer discharged the claimant for fighting with the coworker. The coworker was suspended.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the

employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He argued that he was defending himself. While the coworker was engaged in harassing behavior, there is no evidence that the claimant was being assaulted or in physical danger when he struck the coworker. If the claimant had a complaint about the coworker's behavior, the correct response would be to report the coworker to management for discipline. Instead, the claimant took matters into his own hands and punched the coworker, which was unjustified based on the facts of the case. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 19, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs