

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMED MAGHAD

Claimant

APPEAL NO. 09A-UI-02506-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 01/11/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 6, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 11, 2009. The claimant participated personally. The employer participated by Alicia Alonzo, Human Resource Generalist. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant denial of unemployment benefits.

FINDINGS OF FACT:

Mohamed Maghad was employed by Cargill Meat Solutions Corporation from May 5, 2005 until January 15, 2009 when he was discharged for being involved in an altercation in the company parking lot. The claimant was employed as a full-time production worker and was paid by the hour.

The claimant was discharged after another worker attempted to assault the claimant in the company parking lot. Mr. Maghad had complained to his supervisor on three separate occasions about the comments of the other employee. On the night in question the employee had threatened the claimant and the claimant had reported the threat to his supervisor. Although the supervisor indicated he would "handle it," Mr. Maghad was nevertheless accosted in the company parking lot and pushed the assailant away in order to avoid a confrontation. When he was followed by the assailant, Mr. Maghad went to a police facility to report the matter.

Although the claimant was aware of the company policy that prohibited violence or the threats of violence on company property, the claimant felt compelled to at least defend himself by pushing the assailant away when assaulted.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Mr. Maghad was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant had repeatedly reported to his supervisor threatening statements and harassment by another employee. On the night in question the claimant had specifically informed his supervisor that the other employee had threatened to assault the claimant. When Mr. Maghad attempted to leave the company premises he was accosted and the other individual attempted to assault the claimant. The claimant acted reasonably by pushing the assailant away trying to avoid a physical confrontation.

The administrative law judge concludes based upon the evidence in the record that the claimant did not instigate the altercation between the parties and acted reasonably to avoid it. His act of attempting to fend off an assault did not show a willful disregard for the employer's interests or standards of behavior. The claimant had repeatedly reported the matter to his supervisor; however the claimant was nevertheless accosted by the other employee.

Iowa Code section 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.

For the reasons stated herein the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 6, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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