

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOVANI CARRILLO
Claimant

APPEAL NO. 09A-UI-07820-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 04/19/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 15, 2009. Claimant Jovani Carrillo participated and presented additional testimony through Sam Garcia and Christian Guerrero. Rachel Watkinson represented the employer. Exhibits One through Five were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jovani Carrillo was employed by Cargill Meat Solutions from February 28, 2009 until April 14, 2009, when the employer suspended him for fighting with a coworker. The employer subsequently discharged both employees on April 20, 2009.

On April 14, 2009, Mr. Carrillo was assaulted by a coworker, Jessie Saenz, in an employee locker room. Mr. Saenz was substantially larger than Mr. Carrillo. Mr. Saenz had previously broken windows in Mr. Carrillo's vehicle and defied Mr. Carrillo to do something about it. In the process of assaulting Mr. Carrillo on April 14, Mr. Saenz pinned Mr. Carrillo on the floor of the locker room. Two other coworkers, Sam Garcia and Christian Guerrero, had to struggle to pull Mr. Saenz off Mr. Carrillo. Mr. Saenz continued to assault Mr. Carrillo as coworkers attempted to separate the men. During the assault, Mr. Carrillo acted in self-defense, but did not engage in aggression against Mr. Saenz. Mr. Carrillo retreated from the assault as soon as the opportunity arose.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct. The employer presented no testimony from anyone who witnessed the incident. The employer had the ability to present testimony from one or more eyewitnesses, from one or more supervisors who received the initial report, and from the person who conducted the investigation. The employer presented insufficient evidence to rebut the testimony of Mr. Carrillo and his two witnesses. The weight of the evidence in the record indicates that Mr. Carrillo did not initiate the altercation and responded solely as necessary to defend himself until he could retreat.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Carrillo was discharged for no disqualifying reason. Accordingly, Mr. Carrillo is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Carrillo.

DECISION:

The Agency representative's May 20, 2009, reference 01 decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs