

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMON H LANGFORD
Claimant

**EMPLOYER SOLUTIONS STAFFING
GROUP**
Employer

APPEAL 19R-UI-00598-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/04/18
Claimant: Appellant (2)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Amon Langford, Claimant, filed an appeal from the December 6, 2018 (reference 04) unemployment insurance decision that denied benefits because he was discharged from work with Employer Solutions Staffing Group for fighting on the job. The parties were properly notified of the hearing. The hearing was originally scheduled for December 31, 2018 at 1:00 p.m. The claimant did not register for the hearing. Because claimant had not registered, no hearing was held and a default judgment dismissing claimant's appeal was entered. Claimant filed an appeal with the Employment Appeal Board, which remanded the case for a new hearing. The parties were properly notified of the hearing. A telephone hearing was held on February 5, 2019 at 1:00 p.m. Claimant participated. Amber Foland was a witness for claimant. Employer did not participate. Claimant's Exhibits A and B were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time by Employer Solutions Staffing Group, a temporary employment firm; claimant's final assignment was as a Material Handler with West Worldwide Services in Adel, Iowa. (Claimant Testimony) Claimant began this assignment on June 11, 2018. (Claimant Testimony) Claimant's schedule was Monday through Friday from 6:00 a.m. until 2:00 p.m. (Claimant Testimony)

Claimant's supervisor instructed him to staple certain papers to an assembly order before transferring items to another department. (Claimant Testimony) On October 23, 2018, claimant was following these instructions when his co-worker who was awaiting transfer of the item became inpatient and agitated. (Claimant Testimony) Claimant's co-worker pushed claimant and tried to grab claimant. (Claimant Testimony) Claimant did not initiate the physical altercation. (Claimant Testimony; Foland Testimony) Claimant did not strike or push his co-

worker. (Claimant Testimony) Later that day, claimant was sent home from work. (Claimant Testimony) Claimant reported the incident to employer on October 23, 2018; employer responded that it would contact West Worldwide Services regarding the status of claimant's placement. (Claimant Testimony)

On October 24, 2018, employer contacted claimant and told him that his assignment at West Worldwide Services had ended. (Claimant Testimony) During this phone conversation, claimant requested another assignment. (Claimant Testimony) Employer told claimant that it would search for another assignment. (Claimant Testimony) Approximately one week later, employer informed claimant that it would no longer give claimant assignments due to claimant's misconduct that ended his assignment with West Worldwide Services. (Claimant Testimony) Claimant knows of no reason why West Worldwide Services ended his assignment. (Claimant Testimony) Claimant did not receive any warnings and was not subject to any disciplinary action while assigned to West Worldwide Services. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employee should avoid the use of force when involved in an altercation at the workplace and has a duty to retreat if provided with a reasonable opportunity. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). 6A C.J.S. Assault & Battery § 19, at 343-44 (1975).

Claimant was assaulted by a co-worker. Claimant did not initiate or perpetuate the altercation. Employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The December 6, 2018 (reference 04) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs