

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANCE A JUST
Claimant

APPEAL NO: 10A-UI-09283-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMPC INC
Employer

OC: 05/30/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Chance A. Just (claimant) appealed a representative's June 23, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from AMPC, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2010. The claimant participated in the hearing and was represented by Charles Schulte, Attorney at Law. Gary Colvin appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2006. For about the last year of his employment he worked full time as a cook room operator at the employer's Litton, Iowa meat processing facility on a rotating schedule between first and second shift. His last day of work was May 18, 2010. The employer discharged him on May 19, 2010. The stated reason for the discharge was fighting with a coworker.

On May 18 the claimant had worked on the second shift, 2:00 p.m. to 10:30 p.m., but had worked in the bag room rather than the cook room to fill in for an absent employee. During the shift that had engaged in some "pranking" or "horsing around" with a coworker, William, including "flicking" white powder at William. William took exception to the claimant's actions, and there was a minor verbal exchange between the two.

When the shift ended, the claimant exited the building but was sitting outside the exit door on a bench, smoking a cigarette, when William exited the building. William approached the claimant and further challenged the claimant about "disrespecting" him, suggesting that "we can take this out in the street." The claimant asked William, "Are you sure you want this?" to which William

replied to the effect that a failure to resolve the matter physically would call in to question their manhood.

The employer's plant is located in town, and employee parking is on the city streets surrounding the plant. The claimant's car was parked across and only slightly down the street from the facility, perhaps 30 to 50 feet from the employer's employee entrance/exit. The claimant walked into the street toward his car with William following. The claimant then set his lunch cooler down in the street and turned toward William and prepared to fight. The two exchanged blows, with the claimant knocking William to the ground and inflicting injury to him until he was stopped by some other employees who were nearby. William did require medical treatment for his injuries. Criminal charges were filed; the charges against the claimant were resolved with entry of a deferred judgment on a count of assault.

The employer discharged the claimant on May 19 as a result of the incident. In part the discharge was due to the employer's policies to preserve a "respectful workplace," which the employer considers to include the area surrounding the facility used by the employees for parking, even though the street area is technically not the employer's property or part of its "premises." Further, the claimant had been given a warning on December 19, 2009 after an argument with a coworker which became somewhat physical; that warning specified that if there were such an incident in the future "on or off company property," the claimant would be discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Fighting at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). A discharge for fighting will be disqualifying misconduct unless the claimant shows 1) failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) an attempt to retreat if reasonable possible. Savage, supra. The claimant's involvement in the

fight on May 18 was not without fault on his part, and he acted to facilitate the fight, not retreat from it.

The claimant asserts that his fight with his coworker William should not be deemed to be disqualifying misconduct because it was not on the employer's premises.

Under the definition of misconduct for purposes of the unemployment insurance law, the conduct in question must be "work connected" in order for it to be disqualifying. Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). However, the court has concluded that some off duty conduct can have the requisite element of work connection, such as where there has been a deliberate violation of a specific work rule prohibiting "immoral or illegal conduct." Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions, it has been found:

In order for an employer to show that its employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

[T]hat the employee's conduct (1) had some nexus with her work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996), quoting Feagin v. Director, 652 S.W.2d 839 (Ark. App. 1983); In re Kotrba, 418 N.W.2d 313 (SD 1988).

Here there is a direct nexus or connection between the conduct and the claimant's work – if not for the dispute between the claimant and William that began during the shift related to the claimant's horseplay, there would have been no fight between them in the street outside the employer's plant. There is a clear harm to the employer's interests, at least due to the injury caused to one of its employees and potentially the public perception of the employer as a "corporate citizen" of the city on which street the fight occurred. The claimant had previously clearly been placed on prior notice that the employer would consider such conduct either "on or off company property" to be contrary to and violative of its interests. The claimant's involvement in the fight with William on the city street outside the employer's plant on May 18 shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 23, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 19, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css