

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDGAR J HERNANDEZ
Claimant

APPEAL NO. 13A-UI-09514-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 07/21/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 15, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 23, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Balentine Trujillo participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer at the Tyson plant from October 2012 to July 11, 2013. He was discharged after he was involved with a physical altercation with a Tyson employee on July 11. The employer's work rules prohibit physical contact with other employees in the plant. The claimant was assaulted by the Tyson employee, and the claimant's conduct was done in self defense.

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 § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The employer's representative at the hearing did not witness what happened and did not dispute the claimant's assertion when he was questioned about what occurred that he had been assaulted and acted in self-defense.

DECISION:

The unemployment insurance decision dated August 15, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs