IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM E BAIRES
Claimant

CURLY'S FOODS
Employer

APPEAL NO. 07A-UI-05586-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/29/07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Curly's Foods (employer) appealed a representative's May 22, 2007 decision (reference 01) that concluded William E. Baires (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2007. The claimant participated in the hearing. Anna Zavala appeared on the employer's behalf and presented testimony from one other witness, Bill Willson. Ike Rocha served as interpreter. 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 September 23, 2005. He worked full time as a laborer in the employer's food processing business. His last day of work was April 27, 2007. The employer discharged him on May 1, 2007. The reason asserted for the discharge was the conclusion he had made a threatening and insubordinate statement to his supervisor.

The claimant worked the 3:00 p.m.-to-11:30 p.m. shift. On April 27 the claimant's supervisor, Mr. Willson, saw the claimant standing by the time clock after the end of the shift visiting with a coworker for about five minutes before he punched out. As the claimant began to walk away, Mr. Willson summoned the claimant back to talk to him, as he had previously told the claimant he needed to clock out immediately upon completing his work and determined he needed to again warn the claimant about not clocking out promptly. The claimant believed Mr. Willson was overly critical of him in comparison to other employees and began to walk away. Mr. Willson again called after the claimant, telling him not to walk away while he was talking to him. The claimant then said something which Mr. Willson understood as being that if Mr. Willson had a problem with the claimant that maybe they should "take it out to the parking lot," which Mr. Willson took as a threat and insubordination. He immediately instructed the claimant to accompany him to speak with the production manager, who did speak some Spanish. Speaking

in Spanish to the claimant, the production manager explained to the claimant what Mr. Willson had understood the claimant to have said about taking the matter out to the parking lot. The claimant denied to the production manager and again denied at the hearing under oath that he had said this or anything comparable.

The claimant did speak some English, enough to say “yes” or “no” to basic instructions as to where he should report for work, but he spoke only broken English, even within the hearing of the employer’s Spanish-speaking employees. He routinely communicated with the employer’s Spanish-speaking employees in Spanish when dealing with any issues of any complexity.

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). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
   a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
   b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
   a. Manifest equal culpability, wrongful intent or evil design; or
   b. Show an intentional and substantial disregard of:
      1. The employer's interest, or
      2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the belief he had made a threatening and insubordinate statement to his supervisor about taking a problem "out to the parking lot." This phrasing is an English colloquialism for challenging someone to a physical fight; however, the employer has not demonstrated that the claimant had a sufficient command of English so as to make use of such colloquialisms. Under the circumstances of this case, the administrative law judge finds the claimant's denial that he made such a statement to be more credible. While Mr. Willson may have a good-faith belief that he heard what he reported to have heard, the administrative law judge concludes that it is more likely that he was mistaken and misheard. The employer has not met its burden to show disqualifying misconduct by a preponderance of the evidence. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 22, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw