

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARON L MASON
Claimant

APPEAL NO. 07A-UI-00725-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN GAMES INC
Employer

**OC: 12/24/06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Aron Mason (claimant) appealed a representative's January 12, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with American Games (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2007. The claimant participated personally. The employer participated by Kari Hockemeier, Human Resources Manager, and Craig Kohn, Vice President of Manufacturing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 16, 2005, as a full-time five color press operator. The claimant signed for receipt of the company handbook on May 17, 2005. The handbook contains the employer's Workplace Violence Policy. The policy prohibits the carrying of weapons in the workplace unless authorized by the employer. The employer provides Exacto knives and knives with up to eight inch blades for work purposes. Sometimes there are no knives available. The employer's lead told the claimant he could carry a knife from home to perform his work. Many other employees carried knives from home.

On December 7, 2006, an intoxicated co-worker verbally accosted the claimant. The claimant complained to his supervisors and the man was sent home. Later the co-worker returned and started to charge at the claimant. The claimant put his empty hands in the air. Other employees held the claimant and the claimant's friend led him off to a safe distance. Later an unknown person reported to the employer that the claimant had a knife in his hand that he brought from home.

On December 11, 2006, the employer suspended the claimant for pulling a knife on a co-worker. He was terminated on December 18, 2006.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer provided no first hand eyewitnesses to the incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's January 12, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs