

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN M OLSON**

Claimant

**APPEAL NO: 14A-UI-01562-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASPLUNDH TREE EXPERT CO**

Employer

**OC: 12/15/13**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 4, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Jason Davis, the superintendent, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in January 2010. He worked as a full-time foreman. The employer has zero tolerance for fighting at work.

In mid-December 2012, the claimant's wife drove him to work. The claimant's wife and T.W.'s girlfriend engaged in a verbal confrontation at a hotel. T.W. also worked for the employer. The claimant and T.W. had problems getting along. The claimant felt T.W. had been harassing him for about month and had asked T.W. to stop. The verbal confrontation between his wife and T.W.'s girlfriend upset the claimant.

When the claimant saw T.W. at the end of the day, he was upset. When T.W. approached the claimant, the claimant asked T.W. to leave him alone. T.W. was making unflattering comments about the claimant's wife. T.W. did not leave the claimant alone. Instead he went to the claimant and put his arm around the claimant. The claimant did not want to be around T.W. and pushed him away. When the claimant pushed him, T.W. fell to the ground. The claimant then walked away. The claimant had no intention of fighting T.W. Since the claimant pushed T.W. to the ground, the employer discharged him. The employer concluded the claimant violated the employer's no fighting at work policy. .

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 (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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes that the claimant did not start the December 16, 2012 altercation. The claimant was upset with T.W. and asked T.W. to leave him alone that day. Instead, T.W. went up to the claimant and put his arm around the claimant. The claimant did not intend to push T.W. to the ground, he simply pushed him away. The claimant reacted to T.W.'s inappropriate "hug." While the employer established business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of December 15, 2013, the claimant is qualified to receive benefits.

Note to the parties: If this matter is appealed, the determination that the claimant appealed from (reference 01) failed to notice that this same employment separation was adjudicated in 2013. See decision for appeal 13A-UI-01926-VST. The employer even appealed the administrative law judge's decision and the Employment Appeal Board affirmed this decision on May 6, 2013. See decision for 13B-UI-01926. As a result, the determination that should have been issued was that this employment separation had already been adjudicated in 2013.

**DECISION:**

The representative's February 4, 2014 determination (reference 01) is reversed. The employer discharged the claimant on December 16, 2012, for business reasons, but the claimant did not commit work-connected misconduct. As December 15, 2013, the claimant is qualified to receive benefits. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css