

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN K PETERSON**  
Claimant

**APPEAL NO. 10A-UI-10806-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 06/20/10  
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Karen Peterson filed a timely appeal from the July 27, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 14, 2010. Ms. Peterson participated. Bob Collins, Human Resources Manager for Slaughter and Hide Tanner Division, represented the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Peterson was employed by Tyson Fresh Meats, Inc., as a full-time production worker from June 2009 until July 17, 2010, when Tom Dunlop, Complex Human Resources Manager, discharged her from the employment for fighting in the workplace. Employer witness Bob Collins, Human Resources Manager for Slaughter and Hide Tanner Division, was on vacation at the time of Ms. Peterson's discharge and was not involved in the decision to discharge Ms. Peterson or investigation of the incident that triggered the discharge.

The final incident that triggered the discharge occurred on July 17, 2010. While on a break, Ms. Peterson went to the workstation of another employee, Andrew Locke, to confront Mr. Locke about inappropriate text messages Mr. Locke had been sending to Ms. Peterson. Ms. Peterson had rebuffed Mr. Locke's request to establish a romantic relationship. When Ms. Peterson confronted Mr. Locke, an argument ensued. Mr. Locke hit Ms. Peterson in the mouth, causing her mouth to bleed and giving her a fat lip. Mr. Locke knocked Ms. Peterson's work hat off. As Ms. Peterson retrieved her hat, Mr. Locke hit Ms. Peterson behind the ear. Mr. Locke continued his aggression toward Ms. Peterson. Toward the end of the altercation, Ms. Peterson pushed Mr. Locke away with one hand as he continued his aggressive behavior toward her. Ms. Peterson pushed Mr. Locke in a self-defensive measure to keep him from continuing to hit her. Ms. Peterson then reported the matter to Plant Superintendent Stuart Nissen. Mr. Nissen interviewed Ms. Peterson, Mr. Locke, and a Spanish-speaking employee

who had not witnessed the event from the start, but who had observed Ms. Peterson push Mr. Locke. The employer discharged Mr. Locke and Ms. Peterson. There was no other basis for the employer's decision to discharge Ms. Peterson. The employer recently agreed to allow Ms. Peterson to return to the employment.

### **REASONING AND CONCLUSIONS OF LAW:**

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The employer failed to present testimony from anyone with firsthand knowledge of the incident that triggered the discharge or the investigation of that matter. The weight of the evidence in the record establishes that Ms. Peterson was the victim of an assault and that her only contribution to the physical altercation was a single one-handed push in an attempt to prevent herself from being further assaulted. Ms. Peterson's actions did not constitute misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Peterson was discharged for no disqualifying reason. Accordingly, Ms. Peterson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Peterson.

**DECISION:**

The Agency representative's July 27, 2010, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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