

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAJAE A WISE**  
Claimant

**APPEAL NO. 14A-UI-02424-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/09/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated February 28, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 26, 2014, in by telephone conference call. The claimant participated personally. Brianna McCullough was a witness for the claimant. Employer participated by Kristi Fox, human resources clerk. The record consists of the testimony of Kristi Fox; the testimony of Lajae Wise; and the testimony of Brianna McCullough.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork producer with a facility located in Waterloo, Iowa. The claimant was hired on January 7, 2013. She was a full-time production worker. Her last day of actual work was February 5, 2014. She was terminated on February 11, 2014.

The incident that led to the claimant's termination occurred on February 5, 2014. The claimant was in the locker room getting ready to go to work. Another employee, with whom the claimant had issues, walked up to the claimant and threw an orange drink in her face. This other employee then began swinging at the claimant. She kept hitting the claimant and the claimant responded in kind. The claimant could not get away from the other employee and was attempting to defend herself from the other employee.

The employer has a policy that prohibits fighting and also prohibits retaliation against another employee. The employer terminated the claimant because she retaliated when she was attacked by the other employee.

## 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.

Misconduct that leads to termination does not necessarily disqualify an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer has a material interest in providing a safe workplace free from physical violence and harassment. The employer has the burden of proof to establish misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant's testimony, which was corroborated by her witness, showed that the claimant did not initiate the fight that took place on February 5, 2014. Although it appears that the claimant and the other employee had issues which occurred prior to the fight, the claimant did nothing to provoke the attack that occurred on February 5, 2014. The claimant testified that she could not avoid the attack and move away and that she was merely defending herself. That testimony is accepted. The employer had the business right to terminate the claimant for retaliation, but the claimant is still eligible for unemployment insurance benefits since misconduct has not been established by a greater weight of the evidence.

**DECISION:**

The decision of the representative dated February 28, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs