

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAIMI O AYODELE**  
Claimant

**APPEAL NO. 11A-UI-06661-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 04/17/11  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Raimi Ayodele, filed an appeal from a decision dated May 16, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 6, 2011. The claimant participated on his own behalf and was represented by Dennis McElwain. The employer, Wells Enterprises, Inc. (Wells), did not provide a telephone number where a witness could be contacted and did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Raimi Ayodele was employed by Wells from May 8, 2006 until April 22, 2011 as a full-time sanitation worker. On Saturday, April 16, 2011, the claimant was working with another employee, Sean. Mr. Ayodele was cleaning drains and Sean kept spraying him with hot water from a high-pressure hose. The claimant asked him several times to stop but he did not.

Mr. Ayodele went to look for the supervisor but was unable to find anyone. He returned to work and Sean returned to spraying him with the hot water from the hose. Several more requests to Sean to desist were fruitless and the claimant finally grabbed the hose. In the struggle, the two men came in physical contact with each other. Dewayne Wilson saw them at this point and told them to stop. Later Chad Gotto, the acting supervisor, summoned both men, plus Mr. Wilson, to an office where they were asked what had happened.

Both men were sent home and told to wait until they were contacted. Mr. Ayodele was asked to come in and meet with a human resources representative on April 19, 2011. He was asked to agree with statements in which he admitted to striking the other employee or that he has sprayed the other employee with chemicals. He denied the allegations and would not admit to them. He was sent home again and then asked to return on April 22, 2011. At that meeting, he was discharged for fighting on the job.

## 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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant has denied allegations of fighting on the job, asserting only he was acting in self defense when he tried to take a hot water hose away from his co-worker who was spraying him with it. He did this only after he could not find a supervisor to intervene. There is no proof of any but accidental physical contact between the two men.

The employer has failed to provide any testimony to rebut the claimant's denial of fighting on the job. It has not met its burden of proof to show misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of May 16, 2011, reference 01, is reversed. Raimi Ayodele is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw