

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAIMUN ALI
Claimant

APPEAL NO: 13A-UI-10727-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 08/11/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Maimun Ali (claimant) appealed a representative's September 11, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Agri Star Meat & Poultry, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 15, 2013. The claimant participated in the hearing. Laura Roney appeared on the employer's behalf. Ibrahim Abukar served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on or about June 30, 2012. She worked full time as a general production worker in the employer's kosher slaughter and processing facility. Her last day of work was August 6, 2013. The employer suspended her that day and discharged her on August 15, 2013. The reason asserted for the discharge was having a physical altercation with another employee.

The claimant's shift starts at about 5:50 a.m. On August 6 she and other employees were returning from their first break at about 8:30 a.m.; the claimant asked her foreman which workstation she should report to. She understood him to direct her to a particular workstation, went to that station, and prepared to start working. The employee who had been working at that workstation prior to break then approached her.

The employer provided hearsay statements from a number of employees who asserted that the claimant had then pushed this other employee and tried to grab a hose out of her hands. The claimant denied that she had pushed the other employee or tried to grab the hose out of her hands; rather, she testified that it was the other employee who pushed her and grabbed the hose out of her hands. She further testified that she did not push back, but rather put her hands up in front of her face so as not to make any contact with the other employee. She noted that of the statements read by the employer's witness, one was the person with whom the claimant had the disagreement, one was that person's sister, one was a friend of that person who was not nearby with this occurred, and the other was the foreman who was not present when the dispute occurred.

Other employees gathered around and the foreman came over to the group. The claimant was then sent to human resources. She provided a statement and was then sent home. She understood that the employer was going to check video surveillance to determine if the event was recorded. She was then called back in and discharged on August 15 because the employer accepted the statements of the other employees. The employer could not establish whether video surveillance had been checked or what it might have shown.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion that she had been the aggressor in a physical altercation on August 6, 2013. Fighting at work can be misconduct. *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995). The claimant denied under oath that she was the person who had done any pushing or physical

aggression. The employer relies exclusively on the hearsay accounts from other employees; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those other employees might have been mistaken, whether they actually observed the entire time, or whether they are credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was the employee who did any pushing. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 11, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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