

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE J SANCHEZ PEREZ

Claimant

APPEAL NO: 10A-UI-03633-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/17/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 3, 2010, reference 01, that held he was discharged for misconduct on September 15, 2009, and benefits are denied. A telephone hearing was held on April 22, 2010. The claimant, and his Interpreter, Cecilia Huarte, participated. Jim Hook, HR Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time production worker on March 23, 2009, and last worked for the employer on September 15, 2009. The claimant was discharged for an altercation with a co-employee (Spears) on September 15, 2009. The claimant grabbed the co-employee by the neck during the altercation. The co-employee was also discharged.

The employer explained the no physical contact policy to the claimant during orientation that is a termination offense. The claimant admitted to the employer during its investigation that he did grab the co-worker by the neck during an argument. The employer representative who questioned the claimant is Hispanic and speaks Spanish. The employer questioning was in the presence of a union representative. The employer took statements from eight employees who confirmed the claimant's involvement in the altercation. The claimant admitted in this hearing that he was upset with the co-worker.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on September 15, 2009, for a violation of the employer no physical contact company policy.

The employer's direct testimony based on personnel records and hearsay evidence is more credible than claimant's testimony. The claimant alleges his discharge was racially motivated based on discrimination, but he never reported it to the employer. This allegation and his rambling testimony diminished the credibility of his testimony to the point that his denial of physical contact with the co-worker is not believable.

DECISION:

The department decision dated March 3, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on September 15, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs