

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRAD A MYERS**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 16A-UI-01487-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/10/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 29, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2016. The claimant, Brad A. Myers, participated personally. The employer, Tyson Fresh Meats, Inc., participated through Human Resources Manager Maria Villalpando. Employer's Exhibit 1 and 2 were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a palletizer and general laborer. He was employed from July 14, 2014 until January 12, 2016. His job duties included pulling boxes off of an assembly line and breaking them down.

The claimant was discharged for an incident that occurred on January 11, 2016. On that day the claimant was working with other co-workers on the line. He was in the first position to either retrieve a box or let it go to another worker. There are certain boxes that each of the workers take turns breaking down because they take more work. The claimant's co-worker, Guillermo Hernandez, was at the end of the line. This was approximately 15 to 20 feet away from the claimant. Mr. Hernandez approached the claimant and was yelling profanities at him. He was pointing his finger at the boxes and the claimant while calling him names. His tone of voice was loud and angry. Mr. Hernandez was right up next to the claimant and his face was less than an inch away from the claimant's face. The claimant yelled back at Mr. Hernandez. Mr. Hernandez then raised his arm as if he was going to hit the claimant and the claimant pushed Mr. Hernandez away from him. The push was not hard enough to knock Mr. Hernandez down but was hard enough to get him away from the claimant. Following this incident the two

parties went back to working on the line for approximately another hour. The employer took statements of witnesses, including the claimant, in order to investigate what happened. Ms. Villalpando reviewed a videotape of the incident which confirmed that Mr. Hernandez was the party who approached the claimant. No witness statements or witnesses with first-hand knowledge of the incident testified on behalf of the employer. The videotape was not provided for this hearing. Mr. Hernandez is still employed with this employer.

Prior to this incident the claimant had never received any verbal or written warnings for any conduct with other employees on the job but had received a written warning in August of 2015 for throwing a box on the floor.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Employers have an interest in protecting the safety of all of its employees. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

In this case the claimant was clearly not the aggressor. Ms. Villalpando confirmed that Mr. Hernandez approached the claimant. The claimant pushed Mr. Hernandez as he had raised his arm to hit him. He reacted in self-defense to the assault that was occurring against him. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and the employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Further concerning is the fact that Mr. Hernandez, the aggressor in this instance, was not terminated for his actions. It seems that the claimant has been the subject of the disparate treatment. Since the consequence given to the claimant was more severe than his co-worker received for similar conduct, the disparate application of any policy the employer has regarding claimant's actions in the workplace cannot support a disqualification from benefits.

Benefits are allowed.

**DECISION:**

The January 29, 2016, (reference 01) unemployment insurance decision denying benefits is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Dawn R. Boucher  
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Decision Dated and Mailed

db/pjs