

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY G FAIRHURST
Claimant

APPEAL NO. 07A-UI-09455-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAVERLY TOWNE TAVERN
Employer

**OC: 03/11/07 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Waverly Towne Tavern filed an appeal from a representative's decision dated October 2, 2007, reference 05, which held that no disqualification would be imposed regarding Zachary Fairhurst's separation from employment. After due notice was issued, a hearing was held by telephone at 11:00 a.m. on October 23, 2007. The employer participated by Troy Collins, General Manager. Mr. Fairhurst responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. He did not contact the Appeals Bureau until 11:24 a.m., after the hearing record closed. He was not available at the scheduled time because of the mistaken belief that the hearing was scheduled for 12:00 p.m. Because he did not have good cause for not being available at the scheduled time, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Mr. Fairhurst was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Fairhurst was employed by Waverly Towne Tavern from June 21 until August 20, 2007. He worked approximately 30 hours each week as a cook. He was discharged as a result of an altercation with a coworker on August 17.

Other kitchen workers reported that, on August 17, Mr. Fairhurst was verbally "riding" another cook, Cody. At one point, Cody threw chicken on the counter and told Mr. Fairhurst to cut the "fucking" chicken. Mr. Fairhurst responded by saying "cut the chicken or cut the 'fucking' chicken?" Cody indicated he was not in the mood and that Mr. Fairhurst should shut up or he would cut his throat. Mr. Fairhurst handed him a knife and Cody took it. Mr. Fairhurst then stepped up to Cody and tried to grab the knife. As he was doing so, Cody pulled the knife back, causing three of Mr. Fairhurst's fingers to be cut. At that point, Mr. Fairhurst punched Cody and the two had to be separated by others. As a result of the incident, Mr. Fairhurst was discharged

on August 20, 2007. Cody would also have been discharged but quit before the employer had the opportunity to do so.

Mr. Fairhurst had been verbally warned before August 17 that he was not to harass his coworkers. He had not previously been involved in any physical altercations at work. He filed a worker's compensation claim as a result of the injuries he sustained on August 17.

Mr. Fairhurst filed an additional claim for job insurance benefits effective August 26, 2007. He has received a total of \$434.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Fairhurst was discharged as a result of an altercation with a coworker. He threw the first punch in the incident. Although his hand was cut before he hit Cody, the injury resulted from Mr. Fairhurst grabbing the blade of the knife Cody was holding. In short, he caused his own injury. He knew or should have known better than to grab a knife by the blade. After causing his own injury, Mr. Fairhurst then punched Cody. His act of grabbing the knife escalated what was merely an argument into a physical fight.

The administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Fighting at work, especially in a kitchen where there are sharp knives and hot surfaces, constitutes a substantial disregard of the standards of behavior the employer had the right to expect. Moreover, Mr. Fairhurst's conduct resulted in a worker's compensation claim that would not have come about but for his actions. For the above reasons, benefits are denied. Mr. Fairhurst has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 2, 2007, reference 05, is hereby reversed. Mr. Fairhurst was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Fairhurst has been overpaid \$434.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs