

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANIEL L WASHINGTON
1808 CARRIAGEHILL DR
WATERLOO IA 50701-1705

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04837-DWT
OC: 04/02/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's April 26, 2006 decision (reference 01) that concluded Daniel L. Washington (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2006. The claimant participated in the hearing. Randy Schultz, an assistant human resource manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 1, 2005. The claimant worked as a full-time production worker. The claimant understood the employer had zero tolerance for employees fighting at work.

On March 28 or 29, a female employee talked about another employee, A., who liked the female employee. After she related some time she had spent with A., the claimant indicated he had heard another story from A. The female employee apparently became upset and confronted A. about what he had told the claimant. Later, A. told the claimant that he had to straighten things out with the female employee or A. would get him. The claimant did not take A. seriously and left without thinking again about the comment. At the end of the shift as the claimant left the locker room, A. attacked the claimant. A. had his hands around the claimant's throat. As the claimant tried to get away from A., a minor scuffle occurred between the two men. Other employees saw the two men wrestling and no one knew who started the skirmish. The witnesses' accounts of the incident varied. After the claimant got A. off of him, the claimant walked away. The claimant did not hit A.

Based on the employer's zero tolerance for fighting in the workplace, the employer discharged both the claimant and A. for fighting at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. Since the employer's witness was not present during the "fight," the employer had to rely on hearsay information. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information. A preponderance of the evidence establishes A. attacked the claimant. The claimant did not hit A.; he only tried to get A. off of him. Even though the claimant's comment to the female employee may have initiated A.'s actions, the claimant did not intentionally or substantially disregard the employer's interests. The claimant

did not commit work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 26, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf