

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMON L SCHMITZ**  
Claimant

**APPEAL NO. 07A-UI-10145-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 10-07-07 R: 04**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 19, 2007. The claimant did participate. The employer did participate through Lloyd Blackmon, Human Resources Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a boxer full time beginning April 23, 2007 through September 24, 2007 when he was discharged.

The claimant's father, who was also an employee and another employee, Jeremy Kaska, were involved in a fight. Jeremy Kaska was the aggressor against the claimant's father. When the claimant witnessed his father attacked by Mr. Kaska he intervened into the fight and admittedly "threw some punches" against Mr. Kaska. A supervisor, John Hall, intervened and broke up the fight. Mr. Hall witnessed the claimant hitting the aggressor employee. The claimant did not seek help of a supervisor prior to intervening in the fight to aid his father.

Both Mr. Kaska and the claimant were discharged; Mr. Kaska for instigating a fight and using physical aggression against a coworker and the claimant for hitting Mr. Kaska. The claimant's father was not discharged because he was only trying to defend himself during the fight.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

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.

It is axiomatic that mere words cannot justify assault. The claimant was not justified in hitting Mr. Kaska to break up the fight. In order to break up the fight, the claimant did not have to hit or strike Mr. Kaska. Mr. Hall did not have to hit or strike any of the participants to stop the altercation. The claimant's intervention and his striking and hitting Mr. Kaska was not an attempt to stop or break up the fight, it was a participation in the fight. The employer has an interest in protecting the safety of all of its employees. Claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. It was not necessary for the claimant to strike or hit Mr. Kaska to break up the fight. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct. Benefits are denied.

**DECISION:**

The October 31, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs