

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAUL CASTANEDA

Claimant

APPEAL NO. 13A-UI-01600-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/13/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 7, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Elizabeth Norris, and the assistance of interpreter, Anna Pottebaum. Barbara Larsen participated in the hearing on behalf of the employer. Exhibit A and 1-9 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a worker in the box-making area from November 7, 1990, to January 8, 2013. He was informed and understood that under the employer's work rules, fighting on the job was prohibited.

On January 8, 2013, an unstable employee, Melcher Ramirez, assaulted the claimant. He started by forcefully striking the claimant with his knee to the claimant's leg. He then punched the claimant's face with his fist, stunning the claimant. When Ramirez rushed at the claimant, he reflexively hugged Ramirez around the waist to prevent being struck again. They both fell down with Ramirez landing on top of the claimant. Ramirez raised his arms to strike the claimant again, but he moved his head to Ramirez's chest to avoid getting hit again. At that point, another worker yelled at Ramirez to get off the claimant and separated them. The claimant then went to the office and reported the assault. The claimant's actions were all in self-defense and he was not able to reasonably retreat because of Ramirez's aggressive behavior.

After investigating the matter, the employer discharged the claimant on January 9, 2013, for fighting on the job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant was not the instigator of the altercation. The coworker struck the claimant first. The evidence is clear that the claimant only acted in self-defense and could not have retreated under the facts of this case. Based on the precedent of Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995), the claimant is not disqualified.

DECISION:

The unemployment insurance decision dated February 7, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css