

**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**

**JERRY W WARE
3409 OXFORD ST
DES MOINES IA 50313-4560**

**METRO WRECKING & EXCAVATING INC
1704 E EUCLID
DES MOINES IA 50313**

**Appeal Number: 06A-UI-07552-CT
OC: 07/02/06 R: 02
Claimant: Appellant (2)**

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)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jerry Ware filed an appeal from a representative's decision dated July 25, 2006, reference 01, which denied benefits based on his separation from Metro Wrecking & Excavating, Inc. (Metro). After due notice was issued, a hearing was held by telephone on August 14, 2006. Mr. Ware participated personally. The employer did not respond to the notice of hearing.

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. Ware was employed by Metro from March of 2003 until July 5, 2006. He was last employed full time as a supervisor. On July 5, Mr. Ware

took the van to the back area to load tools for work. He was approached by a mechanic, Jose, and told to move the van. Mr. Ware indicated he would not do so until the tools were loaded. The two became involved in an argument and, at one point, bumped chests. As a result of the incident, Mr. Ware was sent home and later discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ware was separated from employment for any disqualifying reason. 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. Ware was apparently discharged as a result of a verbal altercation with a coworker. Although the two bumped chests, the administrative law judge is not inclined to characterize the incident as a "fight." Nor is the administrative law judge inclined to characterize Mr. Ware as the aggressor in the incident.

The administrative law judge concludes that the dispute of July 5 was an isolated, "hot-headed" incident. The employer did not establish that Mr. Ware had a history of such conduct. The employer failed to establish that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving Mr. Ware should be disqualified from receiving benefits.

DECISION:

The representative's decision dated July 25, 2006, reference 01, is hereby reversed. Mr. Ware was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/cs