

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NGOC T NGUYEN**  
Claimant

**APPEAL NO: 10A-UI-05543-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 03/14/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 5, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on June 21, 2010. The claimant participated in the hearing. Rick Wood, the human resource manager, and Jennifer Stubbs appeared on the employer's behalf. Phung Nguyen interpreted the hearing. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. 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 April 27, 2005. The claimant worked as a full-time laborer. At the time of hire, the claimant received information about the employer's code of conduct policy. The employer's policy informs employees they can be discharged the first time they engage in fighting at work. The claimant understood an employee could be discharged if the employee was involved in a fight at work. Prior to March 11, 2010, the claimant had not been involved in any fights at work and her job was not in jeopardy.

On March 11, the claimant was working as a sorter. While she worked, she stood on a step stool. A co-worker, V.R., also worked as a sorter. V.R. was not working next to the claimant. V.R. wanted the stepstool the claimant was using. V.R. left her work station, a short distance from where the claimant was working, and kicked the stool the claimant stood on or kicked at the claimant's legs. The claimant's supervisor was standing behind the claimant when this occurred. The claimant tried to tell her supervisor what V.R. had just done to her. The supervisor did nothing, but the supervisor may not have understood the claimant because her primary language is Vietnamese. The claimant went back to work.

A short time later, V.R. again approached the claimant and kicked the claimant's leg. V.R. hurt the claimant and the claimant was upset. After V.R. kicked the claimant, she left to return to her workstation. The claimant left her work station and approached V.R. The claimant wanted to know why V.R. kept kicking her. To get V.R.'s attention, the claimant pushed or grabbed V.R.'s coat. The two then returned to their respective work stations. The claimant again reported to her supervisor that V.R. had for a second time kicked her.

Wood investigated the incident in part by reviewing the videotape of the incident. He saw the claimant push V.R. in the back. On March 12, 2010, the employer discharged both the claimant and V.R. for fighting at work.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 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 claimant understood she could be discharged if she fought at work. The claimant did not consider the March 11 incident between herself and V.R. a fight. Since the claimant's supervisor did not testify at the hearing, the claimant's testimony that she told her supervisor or tried to tell her supervisor about the first time V.R. kicked her must be given more weight than the employer's assertion that the claimant did not report the first kicking incident. The evidence shows that even though the claimant confronted V.R. the second time she was kicked, the claimant did not consider what she did as fighting. The claimant was wrong to confront V.R. after she kicked the claimant in the leg a second time. The claimant should have reported the incident immediately to her supervisor instead of following V.R. to push or grab her collar. After the claimant did this, V.R. went to her work station and the claimant left the area and reported how V.R. kicked her a second time.

The employer established business reasons for discharging the claimant. Technically, the claimant violated the employer's rule in the way she responded after V.R. kicked her the second time. When the claimant first went to V.R. instead of her supervisor, she used poor judgment. The facts do not establish the claimant intended to fight V.R. She did not even consider walking up to V.R. to ask why she kept kicking her as a fight. A preponderance of the evidence does not establish that the claimant intended to violate the employer's rules. She did not commit work-connected misconduct. As of March 14, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 5, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant, however, did not commit work-connected misconduct. As of March 14, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs