

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ABNER DOMINGUEZ

Claimant

APPEAL NO: 19A-UI-04026-JC

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP

Employer

OC: 04/21/19

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Abner Dominguez, filed an appeal from the May 10, 2019, (reference 01) unemployment insurance decision that denied benefits based upon his separation with this employer. The parties were properly notified about the hearing. An in-person hearing was held in Council Bluffs, Iowa on June 28, 2019. The claimant participated personally and through Spanish interpreter/IWD employee, Liz Carlson. Laura Vega participated on behalf of the claimant. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Officer Hernandez with Council Bluffs police department attended as an observer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production packer and was separated from employment on April 19, 2019, when he was discharged by the employer.

When the claimant was hired in 2015, he was trained on employer rules and procedures, which prohibit threats or harassment. He signed off on understanding the policies at the time of hire. The claimant had no prior warnings before discharge.

On April 18, 2019, the claimant was in his work area and working with fellow co-worker, Yolanda. The claimant's co-worker/girlfriend walked to his work station to retrieve the car keys for the vehicle they shared. She kissed him briefly, which Yolanda observed and commented as "disgusting." (Yolanda and the claimant's girlfriend used to be friends but were not at the time of

the incident.) Thereafter, Yolanda made a derogatory comment to the claimant about his girlfriend and an argument ensued.

The claimant stated while he was angry “inside”, he did not yell or behave aggressively with Yolanda, but rather directed her to stay in her work area and he would stay in his own. He denied clenching his fists, threatening to hit her in the head, injuring her outside of work, or chopping her up with a machete as alleged by the employer at discharge or the fact-finding interview (See administrative records.) Yolanda reportedly told another employee about the argument who reported it to the employer. Yolanda later bragged that she got the claimant fired (Dominguez testimony). The employer discharged the claimant based upon its policy against threats and violence in the workplace.

The employer did not attend the hearing or submit written documentation in lieu of participation. A review of the fact-finding documents reflects several statements of alleged witnesses, which have been redacted by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

This case rests on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In this case, the administrative law judge also had the opportunity to observe the claimant and his witness in person during the hearing. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Here, the claimant denied making any comment or threat to injure Yolanda, which led to discharge. The co-worker to whom the comment was allegedly made did not participate in the hearing. The employer provided no witness to the incident or representative who interviewed for the hearing. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The administrative law judge recognizes an employer has a responsibility to protect the safety of its employees, from potentially unsafe, or threatening conduct in the workplace, in an era where violence in the workplace is real. However, the employer has failed to establish by a preponderance of the evidence that the claimant's actions on April 18, 2019 violated the employer's harassment or threatening conduct policy. The credible evidence presented is the

claimant had not been previously counseled for similar conduct, nor had a pattern of outbursts or unprofessional conduct and that the decision to discharge him was based solely on one incident between himself and a co-worker named Yolanda. The claimant credibly denied the conduct alleged at the time of discharge or at the later fact-finding interview with IWD. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer chose not to provide evidence to refute the claimant's testimony. The administrative law judge recognizes that more likely than not, the claimant *did* make unprofessional comments to Yolanda after she said derogatory comments about his girlfriend, but the evidence presented does not support that his comments were violent or threatening as alleged.

Based on the evidence presented, the administrative law judge concludes the employer has failed to establish by a preponderance of the evidence that the claimant was discharged for a final, current act of misconduct. The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The May 10, 2019, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn