

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EVARISTO GONZALEZ**  
Claimant

**APPEAL NO. 11A-UI-05595-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURLY'S FOODS**  
Employer

**OC: 07/25/10  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Evaristo Gonzalez filed an appeal from a representative's decision dated April 22, 2011, reference 01, which denied benefits based on his separation from Curly's Foods. After due notice was issued, a hearing was held by telephone on May 23, 2011. Mr. Gonzalez participated personally. The employer participated by Kathy Peterson, Human Resources Manager. Ike Rocha participated as the interpreter.

**ISSUE:**

At issue in this matter is whether Mr. Gonzalez was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gonzales was employed by Curly's Foods from September 23, 2005 until April 1, 2011 as a full-time laborer. He was discharged based on an allegation that he pushed a coworker on March 31, 2011.

On March 31, Francisco Perez came to Mr. Gonzalez' workstation and accused him of having his knife. As it turned out, the knife was company property. Mr. Gonzalez told him he should put his name on it if it was his property. An argument ensued and both were sent to the office. Mr. Perez accused Mr. Gonzalez of pushing him during the argument and Mr. Gonzalez denied it. Another individual, Luis, indicated he had seen Mr. Gonzalez push Mr. Perez. There were no other individuals who acknowledged seeing him push Mr. Perez. As a result of the incident, both individuals were discharged. Mr. Gonzalez did not have any history of fighting or arguing with coworkers.

**REASONING AND CONCLUSIONS OF LAW:**

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. Gonzalez was discharged based on an allegation that he pushed Mr. Perez during an argument about a knife. Mr. Gonzalez denied the allegation. The employer's evidence consisted solely of hearsay testimony. There were no written statements from any of the parties involved in the incident. Although hearsay is admissible evidence, the administrative law judge is not inclined to give it more weight than Mr. Gonzalez' sworn, first-hand testimony.

Mr. Gonzalez worked for Curly's Foods for over five years. There was no evidence that he had ever been in trouble for arguing or fighting with his coworkers. He was credible in his denial that he pushed Mr. Perez or otherwise touched him during the argument. For the reasons stated herein, it is concluded that the employer has failed to establish that Mr. Gonzalez did, in fact, push Mr. Perez. As such, it must be concluded that misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated April 22, 2011, reference 01, is hereby reversed. Mr. Gonzalez was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css