

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN TIAH
Claimant

APPEAL NO. 14A-UI-03991-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 03/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 3, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 6, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative, Brian Ulin. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from July 1, 2013, to February 18, 2014.

On February 18, 2014, a coworker who had harassed the claimant in the past had approached the claimant from behind and repeatedly shoved the claimant while he was working in his work area. The claimant had done nothing to provoke the coworker. The last time the coworker shoved him, the claimant turned and pushed the coworker back in self-defense in order to stay away from the coworker. The claimant did not do anything further to the coworker.

The employer discharged the claimant on February 27, 2014, for fighting with the coworker.

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 unemployment law recognizes that a person may use reasonable force to protect himself or herself from bodily harm, but the person has a duty to retreat if that is possible. *Savage v. EAB*, 529 N.W.2d 640, 642 (Iowa App. 1995).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence establishes the claimant acted in self-defense and had no reasonable opportunity to retreat under the facts of this case. He only used the force necessary to get away from the coworker. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 3, 2014, 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