

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUMBERTO EDINA CUEVAS
Claimant

APPEAL NO. 13A-UI-06570-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 12/30/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 20, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Sheree Smith; an interpreter, Piet Koene; and witnesses, Herberto Medina Garcia and Alba Cuevas Lopez. Carrie Jaster participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from January 3, 2012, to April 22, 2013. He was informed and understood that under the employer's work rules, hitting an employee or fighting on company premises was grounds for disciplinary action.

After work on April 19, the claimant was going out to the parking lot to meet his parents who were picking him up. He witnessed another employee in his vehicle driving too fast in the parking. The employee tried to run into his parents' car and then veered toward the claimant. The claimant slapped the car window with his hand to get the driver's attention. The employee quickly exited his car and rushed at the claimant while yelling at him. He grabbed the claimant's shoulders and started to roughly shake him. The claimant hit the employee in the face because he was afraid that he was going to be hurt. They both fell to the ground with the force of the blow because the employee would not let go of the claimant. The claimant's parents came over and pulled the two men apart. Nothing further happened. The claimant had no chance to retreat after the employee grabbed him.

On April 25, 2013, the employer discharged the claimant for fighting on company premises.

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).

No willful and substantial misconduct has been proven in this case. The claimant was not the instigator of the fight. The employee grabbed the claimant and shook him first. The evidence is clear that the claimant only acted in self-defense and could not have retreated under the facts of this case. Based on the precedent of Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995), the claimant is not disqualified.

DECISION:

The unemployment insurance decision dated May 20, 2013, 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/pjs