

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**LARRY B KEPHART  
1317 – 10<sup>TH</sup> ST NW  
CEDAR RAPIDS IA 52405**

**AMERICOLD LOGISTICS LLC  
C/o ADP UCM THE FRICK COMPANY  
PO BOX 66744  
ST LOUIS MO 63166-6744**

**Appeal Number: 04A-UI-05909-RT  
OC: 05-19-04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Larry B. Kephart, filed a timely appeal from an unemployment insurance decision dated May 19, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 17, 2004 with the claimant participating. Shawn Henrichs, General Manager, participated in the hearing for the employer, Americold Logistics LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time warehouse forklift driver from June 11, 2003 until he was discharged on May 3, 2004. The claimant was discharged for fighting. On August 30, 2004, the claimant got into an argument with a coworker, Randy. Apparently, Randy was not cooperating with instructions provided by the claimant. However, the claimant is not Randy's boss. The claimant and Randy and a couple of other workers were ready to begin another job when Randy got on a truck jack. The claimant told Randy that he needed to be on a forklift truck. Randy told the claimant do not tell me what to do that you are not my boss. The claimant then told Randy "fuck you." Randy then approached the claimant and asked him what the fuck he was going to do and then bumped the claimant's chest. Rather than step aside, the claimant head-butted Randy. The employer has policies in its handbook, a copy of which the claimant received and of which he was aware, prohibiting fighting and providing for automatic termination for fighting. Both the claimant and Randy were discharged. The claimant had received no prior warnings or disciplines for such behavior and there was no other reason for the claimant's discharge.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Both witnesses concede and agree that the claimant head-butted a coworker, Randy. Randy had approached the claimant and had bumped chests, they had exchanged profanities. The claimant then head-butted Randy. The claimant conceded that he could have stepped to the side or stepped away from Randy and did not and conceded that he was wrong in not doing so. After the head-butt, Randy left and apparently reported the behavior. Both were discharged. The employer has policies in its handbook prohibiting fighting and providing for automatic termination for a fight. The administrative law judge is constrained to conclude that the claimant engaged in the fight when he head-butted a coworker. The administrative law judge is also constrained to conclude that this behavior was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. The claimant testified that he and Randy had engaged in an argument and exchanged profanities and Randy had approached him and bumped his chest. However, the claimant could have stepped aside or away from Randy, although he could not step backwards because the forklift was in his way. The claimant conceded he was wrong. It does not appear to the administrative law judge that the claimant was attempting to defend himself but rather was the aggressor at least to the extent of giving a head-butt to Randy. It may well have been that Randy started the argument but the claimant continued the argument and it appears to the administrative law judge the claimant may have been the first to use profanity when he said "fuck you" to Randy. In any event, the administrative law judge does not believe that words are sufficient provocation for a fight or a head-butt at the workplace. The administrative law judge is not unmindful of the serious problems of workplace violence.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

#### DECISION:

The representative's decision of May 19, 2004, reference 01, is affirmed. The claimant, Larry B. Kephart, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

tjc/b