

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELO V MCCLEARY
Claimant

APPEAL NO. 11A-UI-02715-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINERIDGE FARMS LLC
FORESURE TRANSPORT**
Employer

**OC: 01/02/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Angelo McCleary filed a timely appeal from a representative's decision dated March 1, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 29, 2011. Claimant participated personally. The employer participated by John Anderson, Human Resource Manager; Larry Gaskill, Plant Superintendent; and Christobal Hinojos.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Angelo McCleary was employed by Pineridge Farms LLC as a shipping department worker. Mr. McCleary was employed from April 15, 2010 until November 5, 2010 when he was discharged from employment.

The claimant was discharged based an altercation that took place on November 3, 2010. On that date a company worker reported that he had a verbal altercation with Mr. McCleary. Subsequently the employee attempted to return to the work area where he encountered Mr. McCleary. When next observed by company employees Mr. McCleary and other worker were engaged in a full-fledge physical altercation. Although management personally attempted to separate the parties, Mr. McCleary continued to attempt to strike the other worker with his hardhat and struck the plant manager while continuing to fight.

A decision was made to terminate both Mr. McCleary and the other worker for violation of the company's zero-tolerance rule against violence in the workplace.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

The evidence in the record establishes that both Mr. McCleary and another worker were both discharged for fighting on the job. The evidence establishes that the other worker had early on complained that Mr. McCleary was acting in a menacing manner when the other worker attempted to return to the work location in the plant. A physical confrontation ensued. The physical confrontation was witnessed by management personnel who immediately attempted to separate the parties. While attempting to separate the parties the evidence establishes that Mr. McCleary continued to be the aggressor striking both the other worker as well as the plant manager.

This conduct clearly showed a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 1, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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