

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DORA PARADA**  
Claimant

**APPEAL NO. 13A-UI-09326-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G & K SERVICES COMPANY**  
Employer

**OC: 06/30/13**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 2, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2013. Claimant participated and was represented by George Jones, Attorney at Law. Employer participated through plant manager, Brian Christner and employee relations manager, Marie Smith. The claimant's postponement and subpoena requests on the date of the hearing were not granted because they were not made at least three days prior to the hearing according to the hearing notice instructions.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a general laborer from 2002, and was separated from employment on July 3, 2013. On that date she was involved in a physical altercation with lead general laborer Mildre Rodriguez, who was also fired. General laborer Maria Ramos went to the scene after hearing a commotion and reported the incident to Christner. Christner and maintenance manager Mike Ryan conducted interviews with general laborers Prem Nepal, Maria Brito, Ramos, and lead general laborer Maria Oriellana Rivas. Several tunnel hanging station workers were in the area but were not interviewed. Rodriguez approached claimant's work area and pushed a clothes cart forcefully towards claimant. It crashed into another cart parked there, which hit her on the leg. Claimant asked her why she pushed the cart so hard. Rodriguez pushed the cart hard again twice, went into the work area and got onto a skid pallet claimant was standing on to reach items. Rodriguez told her she was a "big mouth" and did not have "the balls" to start with her. Claimant told her to leave the work area. Rodriguez approached and hit claimant on the forehead, which knocked her glasses off to the floor. Claimant "saw stars" and could not get out of the area so she covered her face. Rodriguez stayed right in front of her, the two carts were blocking the rest of the egress, and there were hot irons blocking other parts of the work area. Claimant does not know how she got out of there. She sustained

a scratch on the side of her head and a broken finger from Rodriguez striking her while she was protecting her face.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information;

(4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon hearsay statements, the administrative law judge concludes that the claimant's testimony is credible and the employer has not met its burden of proof. The employer did not present evidence that claimant was at fault in bringing on the encounter, was unable to escape and did not fight back but only passively defended herself. The employer has failed to meet its burden of proof that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The August 2, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css