

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**YUNET ZERQUERA**  
Claimant

**IOWA PREMIUM LLC**  
Employer

**APPEAL 17A-UI-03418-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/19/17  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Iowa Premium, LLC (employer) filed an appeal from the March 23, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Yunet Zerquera (claimant) did not engage in willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 21, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resources Manager Jenny Mora. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the fact-finding documents and the claimant's database readout (DBRO).

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits?  
Can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Fabricator beginning on September 13, 2016, and was separated from employment on February 20, 2017, when he was discharged. The employer has a policy that prohibits fighting amongst employees while at work. According to the policy, one incident of fighting can lead to discharge. The claimant received a copy of the policy when he was hired.

On February 15, 2017, the claimant believed a co-worker had said or done something to his girlfriend. The claimant chose to approach the co-worker who worked on another line to address the situation. He physically assaulted the co-worker in front of supervisors and other employees when his fist made contact with his co-worker's head. After an investigation, the claimant was discharged for fighting at work.

The administrative record reflects that the claimant has not received any unemployment benefits since filing a claim with an effective date of February 19, 2017. He has not made any continued claims for benefits since his original claim date. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct, stating:

“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.

Iowa Admin. Code r. 871-24.32(1)a. This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has an interest and duty in protecting the safety of all of its employees. The claimant's physical assault of a co-worker at work was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

As the claimant has not filed for or received any benefits, the issues of overpayment and repayment are moot and there have been no charges to the employer's account as a result of the claimant's claim.

**DECISION:**

The March 23, 2017, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment and repayment are moot and there have been no charges to the employer's account as a result of the claimant's claim.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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