

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETRONILO MENDOZA
Claimant

APPEAL NO. 09A-UI-06963-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

OC: 04/12/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Petronilo Mendoza filed a timely appeal from the May 4, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 1, 2009. Mr. Mendoza participated. Aaron Peterson, Human Resources Manager, represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Petronilo Mendoza was employed by Osceola Foods Corporation as a production worker from October 2005 until April 10, 2009, when the employer discharged him for fighting in the workplace. On April 8, a coworker in same work area told Mr. Mendoza to hurry up his work. Mr. Mendoza got mad. Mr. Mendoza, work knife in hand, walked the fifty feet to where the coworker stood. Mr. Mendoza, knife in hand, pushed the coworker. Mr. Mendoza pushed the coworker two or three times. Mr. Mendoza waived the knife in the coworker's direction, placing the coworker in fear that Mr. Mendoza was going to cut or stab him. Other employees witnessed the incident or part of it and each saw Mr. Mendoza initiate a physical altercation by pushing the coworker. When the employer interviewed Mr. Mendoza, Mr. Mendoza admitted that conduct. Mr. Mendoza said he got mad and lost control.

REASONING AND CONCLUSIONS OF LAW:

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The weight of the evidence indicates that Mr. Mendoza assaulted a worker on April 8, 2009. The evidence indicates that Mr. Mendoza initiated the physical altercation. The evidence indicates that the coworker responded only in self-defense to Mr. Mendoza's aggression, which included waving a knife at the coworker.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mendoza was discharged for misconduct. Accordingly, Mr. Mendoza is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Mendoza.

DECISION:

The Agency representative's May 4, 2009, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has

worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css