

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIO A CARRILLO
Claimant

KCS MERGERCO LLC
Employer

APPEAL NO. 14A-UI-09220-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/10/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Julio Carrillo, appealed an unemployment insurance decision dated September 4, 2014, reference 02, that concluded he was discharged for work-connected misconduct. Hearings were held in Des Moines, Iowa, on September 30, October 17, and November 7, 2014. The parties were properly notified about the hearing. Mr. Carrillo participated in the hearings with the assistance of an interpreter, Anna Pottebaum. Phillip Miller, Attorney at Law, represented Mr. Carrillo, and he had a witness, Scott Gratias. Espnola Cartmill, Attorney at Law, represented the employer. The employer had witnesses, John Anderson and David Fernandez. Exhibits 1, 1A, 2, 3, 4, 5, 6, 7, and 9 and H, J, K, L, and M were offered and admitted into evidence. This is a duplicate decision to the decision issue in 14A-UI-09219-SW because the employer reported wages during Mr. Carrillo's base period under two account numbers. Based on a careful review of the evidence, the arguments of the parties, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Was Mr. Carrillo discharged for work-connected misconduct?

FINDINGS OF FACT:

Julio Carrillo worked full time for the employer from June 22, 2009, to August 2, 2014. He was working as a floor janitor for the employer in the ham bone department. Mr. Carrillo was informed that under the employer's anti-violence policy, physical or verbal intimidating, threatening, or violent conduct were prohibited.

On the morning of August 2, 2014, Mr. Carrillo had two encounters with a utility worker, David Fernandez, who was operating a forklift to move full cardboard containers (called combos) of meat. Mr. Carrillo's job that morning was to break down and fold empty combos and stack them on a pallet. Both men were working in a narrow corridor with boxes and equipment on either side of the corridor. The pallet where the folded combos were stacked was across from a doorway leading into the corridor.

The first time, Mr. Carrillo was dragging an empty combo down the center of corridor to the pallet of folded combos. Mr. Fernandez was coming out to the doorway. As he turned right out of the doorway, he clipped the empty combo with the forklift. Mr. Fernandez stopped and two men exchanged words with Mr. Fernandez questioning Mr. Carrillo about why he was folding the combos there. After a short time, the men went back to their jobs.

The second time, Mr. Fernandez rounded the corner with his forklift again as Mr. Carrillo was moving another empty combo box down the corridor. Mr. Carrillo kicked the box to move it and then Mr. Fernandez drove the forklift into the side of the box. This caused the box to bounce back and hit Mr. Carrillo and knocked him to the floor. Mr. Fernandez stopped his forklift.

Mr. Carrillo got up and advanced toward Mr. Fernandez and hit Mr. Fernandez in the shoulder with his fist. They exchanged words again and then Mr. Carrillo shoved Mr. Fernandez to push him off the forklift. They both walked over to talk to another employee and then separated.

Mr. Fernandez complained to a supervisor about the Mr. Carrillo's conduct. The employer conducted an investigation into what happened, including reviewing video of the incident.

After completing the investigation, management decided that Mr. Carrillo had hit and shoved Mr. Fernandez in violation of the employer's anti-violence policy. As a result, the employer discharged Mr. Carrillo on September 8, 2014. There was no other reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Mr. Carrillo was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Mr. Carrillo's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of Mr. Carrillo. He struck and shoved Mr. Fernandez in violation of company policy.

Mr. Carrillo contends that his actions were in self-defense. In Savage v. Employment Appeal Board, 529 N.W.2d 640, 642 (Iowa Ct. App. 1995) ruled that: "to invoke the self-defense doctrine, [a party] need show: 1. freedom from fault in bringing on the difficulty; 2. a necessity to strike; and 3. an attempt to retreat unless there is no mode of escape or the peril will increase. The evidence in this case shows that Mr. Carrillo struck and pushed Mr. Fernandez in reaction to being knocked down. He did not strike Mr. Fernandez to defend himself. Mr. Fernandez was sitting on his forklift with his seatbelt on. Mr. Carrillo could have easily walked away and reported Mr. Fernandez's conduct to management.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 4, 2014, reference 02, is affirmed. Julio Carrillo is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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