

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOANG V NGUYEN
Claimant

APPEAL NO. 06A-UI-10651-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 10/08/06 R: 1
Claimant: Appellant (1)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Hoang Nguyen, filed an appeal from a decision dated October 30, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 20, 2006. The claimant participated on his own behalf and was represented by Attorney Jay Smith. Phung Nguyen acted as interpreter. The employer, John Morrell and Company (Morrell), participated by Director of Human Resources Steve Joyce.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Hoang Nguyen was employed by Morrell from August 5, 2002 until October 6, 2006. He was a full-time laborer working the second shift. On the night of October 2, 2006, Mr. Nguyen was involved in a fist fight with another employee, Mr. Sanchez. Witnesses to the event notified the employer the next day and an investigation was done. Witnesses were interviewed as well as the two participants. One of the witnesses was the person with whom the claimant car-pooled to work on a daily basis.

The claimant and Mr. Sanchez had been arguing about something throughout their shift and finally met up in the parking lot as they were heading for their cars to leave. The two men walked some 10 or 15 yards from the others in the area and then Mr. Nguyen kicked Mr. Sanchez in the leg, and then the two of the rolled around on the ground hitting each other with closed fists until a third person broke up the fight.

The police were summoned by one of the witnesses when it became obvious Mr. Sanchez had been hurt but everyone was gone by the time offices arrived. Mr. Sanchez did report to the local emergency room and was referred to a specialist in Omaha, Nebraska, for a serious eye injury.

When the claimant was interviewed on October 3, 2006, by Director of Human Resources Steve Joyce, he acknowledged he had “done something wrong” and only asked that if he were fired, the other individual would be fired as well. He was suspended pending the results of the investigation. Mr. Sanchez was interviewed when he was released from the hospital on October 5, 2006, and agreed with the other witnesses that Mr. Nguyen had kicked him in the leg first, but that the two of them had struck each other until the fight was broken up.

Both the claimant and Mr. Sanchez were discharged for violation of the zero tolerance company rule against fighting on the job.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

At the appeal hearing the claimant denied each and every part of the employer's testimony, including the statements made by the witnesses to the fight. He even denied his own denial that he had a weapon at the time of the fight. The administrative law judge finds this highly suspicious. He has presented no good reason why three strangers, as well as the person with whom he car pooled, would all have agreed to make false statements regarding the sequence

of events on October 2, 2006. Or why those false statements would all agree as to what happened.

The evidence is clear the claimant was involved in a fist fight on company property on October 2, 2006. This is a violation of a strict, zero-tolerance company rule. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 30, 2006, reference 01, is affirmed. Hoang Nguyen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs