

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN M LANG
Claimant

EJG MANAGEMENT LLC
Employer

APPEAL 18A-UI-12404-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/02/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Megan Lang, Claimant, filed an appeal from the December 19, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with EJG Management, LLC due to fighting on the job. The parties were properly notified of the hearing. A telephone hearing was held on January 15, 2019 at 1:00 p.m. Claimant participated. Employer participated through Holly Anderson, Director of Operations. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a crew member from August 10, 2016 until her employment with EJG Management, LLC (d/b/a McDonald's) ended on November 30, 2018. (Anderson Testimony; Claimant Testimony)

On November 24, 2018, claimant and the shift manager, Michael Hall, got into an argument about claimant's use of the radio. (Claimant Testimony) Employees had to climb on top of a cooler to plug in and operate the radio. (Claimant Testimony) At some point during the argument, Hall unplugged the radio. (Claimant Testimony) Claimant climbed on top of the cooler to plug the radio in and change the channel. (Claimant Testimony) When claimant was getting down from the cooler, she fell. (Anderson Testimony) When claimant got back to her feet she approached Hall and hit him in the face. (Anderson Testimony) Then, Hall struck claimant in the head. (Anderson Testimony) Employer learned of the incident the same day and suspended the parties pending an investigation. (Anderson Testimony)

Employer gathered statements from six witnesses and reviewed surveillance video. (Anderson Testimony) Claimant's statement alleged that she did not fall when getting down from the cooler but that Hall pushed her to the ground. (Claimant Testimony) Claimant further alleged

that Hall was grabbing her arms and blocking her path when she swung her arm and hit Hall in the face. (Claimant Testimony) Claimant also alleged that Hall grabbed her by the hair and hit her in the head multiple times. (Claimant Testimony) Two witnesses stated that Hall was not around claimant when she fell to the ground and that claimant struck Hall first. (Anderson Testimony) These witnesses' accounts are consistent with the surveillance video. (Anderson Testimony) Claimant admits that she could have left the area of the altercation and walked to the front of the restaurant where the general manager was working prior to striking Hall in the face. (Claimant Testimony)

On November 30, 2018, employer terminated claimant's (and Hall's) employment due to violation of the employer's harassment policy. (Anderson Testimony) The harassment policy states that if an employee touches a coworker in an unwelcome or physically violent manner the employee will be terminated. (Anderson Testimony) The policy is included in the employee handbook, of which claimant received a copy. (Anderson Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

An employee should avoid the use of force when involved in an altercation at the workplace and has a duty to retreat if provided with a reasonable opportunity. 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). 6A C.J.S. Assault & Battery § 19, at 343-44 (1975).

Employers generally have an interest in protecting the safety of all of their employees and invitees. Claimant approached her coworker and struck him in the face. Claimant was not acting in self-defense, because claimant brought on the encounter, did not need to fight back and could have retreated. By striking her coworker rather than immediately leaving the area and reporting the incident to the general manager, claimant violated specific work rules and acted against commonly known acceptable standards of work behavior. Claimant's behavior was contrary to the best interests of employer and the safety of its employees and invitees, and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The December 19, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs