

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYCE L GULLY
Claimant

APPEAL NO. 13A-UI-12809-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC L
Employer

OC: 10/27/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 18, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Floyd Jones participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a laborer for the employer from September 26, 2012, to October 30, 2013. He was informed and understood that under the employer's work rules, fighting on the job was prohibited.

A worker named Juan tried to provoke the claimant to fight him. The claimant ignored Juan. A short time later while the crew was outside, Juan gave his equipment to a supervisor and assaulted the claimant. He swung his fist at the claimant, and then, grabbed him in a headlock and punched the claimant three times in the face. The claimant then pushed Juan to the ground and held him there. Supervisors who were standing around when the claimant was being punched intervened. They got up, and the claimant was afraid that Juan was going hit him again so the claimant punched him once in self-defense before the supervisor broke them up.

The employer discharged the claimant on October 30, 2013, for fighting on the job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant 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 section 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).

The unemployment law recognizes that a person may use reasonable force to protect himself or herself from bodily harm, but the person has a duty to retreat if that is possible. Savage v. EAB, 529 N.W.2d 640, 642 (Iowa App. 1995).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence establishes the claimant acted in self-defense and had no reasonable opportunity to retreat under the facts of this case.

DECISION:

The unemployment insurance decision dated November 18, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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