

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PANTHER M DENG
Claimant

APPEAL NO. 11A-UI-15958-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 11/06/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 7, 2011, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 17, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Eloisa Baumgartner 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 production employee from April 28, 2008, to November 2, 2011. She was informed and understood that under the employer's work rules, fighting or having forceful physical contact with an employee was prohibited.

On November 1, 2011, an employee threatened the claimant for going past her on the line and then slapped her with a rubber glove. The claimant reported what had happened to a supervisor but later was physically assaulted by the employee in the bathroom. To defend herself, the claimant pushed the employee away but did nothing else to the employee. After the matter was reported to management, the employer discharged the claimant for violating the no fighting policy on November 4, 2011.

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 § 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that she had not done anything more than push the employee who was assaulting her away in self-defense. The employer's evidence to the contrary is uncorroborated hearsay, which is entitled to less weight.

No willful and substantial misconduct has been proven in this case. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

DECISION:

The unemployment insurance decision dated December 7, 2011, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs