

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY W VAN WAARDHUIZEN
Claimant

APPEAL NO: 13A-UI-00777-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

**OC: 12/16/12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 15, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his attorney, Phillip Myers. Troy Hawkshead, the plant manager, Erin Montgomery, Cham Thongvanh and Todd Yocum appeared on the employer's behalf. During the hearing Claimant Exhibits A through D and Employer Exhibit One were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 1998. He worked full time. The union contract informs employees that horseplay which results in injuries to employees or destruction of the employer's property amounts to gross misconduct and could result in an employee's immediate discharge. (Claimant Exhibit D.) The claimant understood he could be discharged if he fought another co-worker at work. The employer expects an employee to walk away and not retaliate if a co-worker hits or punches the employee.

Prior to December 18, 2012, the claimant's job was not in jeopardy. On December 18, the claimant became upset when he came back from the restroom and discovered someone cut off a finger in his glove. A co-worker, T.N., was on a forklift and dangled a glove at the claimant. T.N. had a smile on his face. T.N. told the claimant that he was a big baby. The claimant told T.N. to leave him alone. The claimant tried to ignore T.N., but could not. T.N. backed his forklift next to the claimant. The two men started verbally antagonizing one another. They shouted at and taunted one another. They both became upset. After TN told the claimant that he was not scared of the claimant and that he could kick the claimant's ass. The claimant responded, "Same to you." T.N. then got off his forklift and approached the claimant. The claimant indicted

he did not start punching T.N. until T.N. had knocked him down to the floor twice. The two men were then hitting and punching each other until co-workers came and pulled them apart.

When the employer talked to the claimant about the incident, he told the employer that he did not pull the first punch, but if someone hits him, he will hit them back. (Employer Exhibit One.) T.N. denied he threw the first punch. (Employer Exhibit One.) One employer D.D. reported that t T.N. threw the first punch. (Employer Exhibit One and Claimant Exhibit C. K.J. statement to the employer and the statement he wrote in Claimant Exhibit B are not consistent.

Based on the employer's investigation, the employer discharged both men on December 18 for fighting at work and violating the union contract. The employer concluded the claimant could have walked away from the situation and did not. As a result of the claimant's comments before the fight and throwing punches at T.N., he violated the employer's work rules and the policy in the union contract.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On December 18, the claimant was upset when he discovered someone (not T.N.) had cut a finger off his glove. The claimant became more upset when T.N. dangled a glove at him and smiled or laughed at him. T.N. drove his forklift by the claimant and the two engaged in a verbal confrontation. Both men became angry and taunted the other person. Finally, T.N. got off his forklift and approached the claimant. T.N. may have thrown the first punch or first two punches. Instead of walking away, the claimant was upset and starting hitting T.N. The two were so angry that co-workers had to pull them apart. As a result of their fight, T.N. had cut on his head and some pallets had been damaged.

While the claimant is not totally at fault, his comment to T.N. before the actual fist fight provoked T.N. The comments made by both men resulted in them becoming upset and angry. Instead of taunting T.N. before the fist fight, the claimant could have walked away and told someone in management about his issues with T.N. Neither the claimant nor T.N. acted reasonably. Even though the claimant may not have started the fight, his comments before the fist fight added fuel that eventually resulted in the two men fighting at work.

The employer discharged the claimant for work-connected misconduct. The claimant failed to de-escalate the situation by walking away or not saying anything to T.N. Instead, he egged on T.N. Unfortunately, the claimant's emotions took control over his common sense. This one

incident constitutes work-connected misconduct. As of December 16, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 15, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for his December 18 conduct which amounts to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 16, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css