

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JORGE GARCIA-SOUZA**  
Claimant

**APPEAL NO. 06A-UI-09896-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLOVERLEAF COLD STGE CO**  
Employer

**OC: 09/17/06 R: 01  
Claimant: Appellant (2)**

Section 96.5-2a - Discharge

**STATEMENT OF THE CASE:**

Jorge Garcia-Souza (claimant) appealed a representative's October 11, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Cloverleaf Cold Storage Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2006. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Jean Elkins, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on June 28, 2000. The claimant worked as a full-time production worker. The claimant understood the employer did not allow employees to fight at work.

On September 14, 2006, the claimant asked another employee, who operated a forklift, to move a pallet. The forklift operator became very upset and started yelling at and insulting the claimant. This employee used profanity to describe the claimant's mother. As the claimant started to walk away, the forklift operator backed the claimant up against some machines. In an attempt to get away from this employee, the claimant pushed the employee away from him. In response to this push, the employee hit the claimant.

After the employer learned about the confrontation, the employer talked to employees in the area. Two witnesses indicated they heard both men yelling and arguing at one another. The witnesses reported seeing the claimant push the other employee. One witness saw the employee hit the claimant, but the other witness did not see the employee hit the claimant.

Even though the claimant's job was not in jeopardy prior to September 14, the employer discharged both employees for fighting at work. The employer discharged the claimant on September 18, 2006.

**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 section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. Since the claimant was the only witness with first-hand knowledge as to what occurred on September 14, his testimony at the October 24 hearing must be given more weight than the employer's reliance on statements from employees who did not testify at the hearing. A preponderance of the facts does not establish that the claimant started the confrontation or acted unreasonably or in less than a prudent manner when the other employee backed him into a machine and threatened to hurt him. The fact the claimant pushed the other employee away from him in an attempt to get away from the employee does not by itself amount to work-connected misconduct. The claimant did not commit work-connected misconduct on September 14. Therefore, as of September 17, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's October 11, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of September 17, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/cs