

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ABELINO FERNANDEZ
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MUSCATINE IA 42761

TYSON FRESH MEATS INC
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ST LOUIS MO 63166-0283

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Appeal Number: 04A-UI-04171-AT
OC: 03-07-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Abelino Fernandez filed a timely appeal from an unemployment insurance decision dated March 30, 2004, reference 01, which disqualified him for benefits following his discharge from employment at Tyson Fresh Meats, Inc. After due notice was issued, a telephone hearing was held May 14, 2004 with Mr. Fernandez participating and being represented by William Bribriesco, Attorney at Law. Employment Manager Christy Travis participated for the employer. Guadalupe McCarney served as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Abelino Fernandez was a production worker for Tyson Fresh Meats, Inc. from September 14, 1992 until he was discharged February 23, 2004. On or about February 20, 2004 Mr. Fernandez fought with a coworker, Apolinaro Ocampo, in the company parking lot. The two exchanged insults, shoves and punches. Their dispute was an offshoot of problems between their wives. Mr. Fernandez had received two prior warnings because of verbal confrontations with Mr. Ocampo. Mr. Ocampo had received the same warnings and both men were discharged after the fight. The company has a rule which prohibits fighting on company premises. Discipline in such cases is determined on a case-by-case basis looking at an employee's prior record and the seriousness of the present offense. A coworker who had observed the incident on February 20, 2004 thought it was serious enough to call local law enforcement.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Fernandez was discharged for misconduct in connection with his work. It does.

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 individual shall be disqualified for benefits 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- 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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's testimony that he was merely defending himself is contradicted by the statements given by both participants at the time of the final incident. The administrative law judge concludes that there is an element of truth in the statement of each of the participants. He concludes that both parties bear responsibility for instigating and escalating the situation on February 20. Whether or not Mr. Fernandez struck the first blow, it appears from the evidence that he is at least in part responsible for the situation. Because of this and because of prior warnings, the administrative law judge concludes that disqualifying misconduct has been established. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 30, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tjc/kjf