

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLOS N MEDINA APONTE
Claimant

NETWORK IMAGING SOLUTIONS LLC
Employer

APPEAL 16A-UI-07296-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 9, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2016. Claimant participated. CTS Language Link interpreter ID number 6619 interpreted on behalf of claimant. Claudia Iglesias testified on behalf of claimant. Employer participated through human resource generalist Carrie Jaster. Production manager Josh Schloemer attended the hearing on behalf of the employer. Claimant exhibit A was admitted into the record with no objection. Claimant supplied a form that was submitted to the Civil Rights Commission, but it was not marked and not admitted into the record; however, claimant was allowed to testify to any relevant information contained in the document.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler/manufacturing from December 10, 2012, and was separated from employment on May 24, 2016, when he was discharged.

The employer has a violence in the workplace policy in the handbook. The policy prohibits workplace violence, including threats of violence.

Prior to May 23, 2016, claimant had problems with a team lead named Harvey. Claimant believed that Harvey favored other employees. On May 23, 2016, claimant was working his scheduled shift. Claimant was helping a coworker when Harvey came and started yelling at him. A coworker then asked claimant why he looked angry. Claimant stated that he did not want to see Harvey, because he is not sure what would happen if he saw Harvey. The coworker went and told Harvey and then Harvey came over and asked what claimant was saying. Harvey started yelling at claimant. Claimant testified he was bursting with anger. Claimant then pushed Harvey. Claimant then stated lets go outside and have it out and punch

each other now. Claimant did not walk away from Harvey because he was really angry; it had been building for a long time. Harvey then yelled go home, go home. Harvey started to walk outside and claimant started to follow him. Claimant was then separated and Ms. Jaster came down. Ms. Jaster then began to investigate the incident.

Ms. Jaster asked another employee (Surge) what happened. Surge stated that he just heard claimant and Harvey yelling. Ms. Jaster also spoke to Mr. Johnson about the incident. Mr. Johnson stated claimant was in the wrong area. They went to get Harvey to see where claimant should be. When they returned to the work station, claimant was yelling at Surge. Harvey asked what happened and claimant then pushed Harvey in the shoulder. Ms. Jaster then spoke to claimant. Claimant stated that he did not touch Harvey. Claimant was frustrated because everyone complains about Harvey. Claimant stated that Harvey is mean and makes people cry and nobody does anything about it. Ms. Jaster told claimant that because of what she witnessed, he needed to go home and she would contact him the next day. Ms. Jaster then went and spoke to Harvey. Harvey stated that when he called Brandon, claimant followed him and was pushing him. Ms. Jaster told Harvey that because of what she witnessed, he needed to go home and she would contact him the next day.

On May 24, 2016, the employer discharged claimant and Harvey. Claimant did not have any prior warnings for violating this policy or for similar incidents. The employer decided to discharge claimant because of the seriousness of the altercation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a policy that prohibits workplace violence, including threats of violence. Ms. Jaster testified that through her investigation, it was determined that claimant pushed and threatened a coworker (Harvey). Claimant also admitted to being angry, pushing Harvey, and asking him to go outside to punch each other. Although Harvey may have initiated the incident by yelling at claimant first; claimant had the opportunity to walk away, yet he stayed and eventually pushed and threatened Harvey.

The employer has presented substantial and credible evidence that claimant pushed a coworker (Harvey) and threatened him with violence, in violation of the employer's policy. The employer has a duty to protect the safety of its employees. Claimant's conduct was contrary to the best interests of the employer and the safety of its employees. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The June 9, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs