

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A MNEUR
Claimant

APPEAL NO. 08A-UI-01479-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

**OC: 01/13/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Mneur filed an appeal from a representative's decision dated February 4, 2008, reference 01, which denied benefits based upon his separation from Iowa Pacific Processors, Inc. After due notice was issued, a hearing was held by telephone on March 11, 2008. The claimant participated personally. The employer participated by Mr. Dave Martin. Official interpreter was Magdy Salama.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from December 24, 2007 until January 10, 2008 when he was discharged due to an altercation. Mr. Mneur was employed as a full-time production worker and was paid by the hour.

On January 10, 2008, the claimant was involved in a physical altercation with another worker. The other worker believed that Mr. Mneur had taken one of his work utensils. Although the claimant attempted to avoid the fight, the other employee attempted to strike the claimant. The claimant acted only in defense to ward off a blow. No supervisory personnel were present and the claimant had no alternative when the other employee began to assault him in a location where the claimant did not have any method of retreating from the individual who was assaulting him.

The claimant denies fighting or continuing to fight and denies striking, kicking or otherwise acting inappropriately towards a supervisor who later arrived. The claimant denies being arrested or escorted from the premises by the police.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the employer has sustained its burden of proof in showing intentional disqualifying misconduct on the part of the claimant at the time of the separation. It has not. The evidence in this case on behalf of the employer was based strictly on hearsay evidence. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony.

In this matter the claimant testified under oath that he did not instigate or engage in fighting behavior but only momentarily attempted to extract himself from the assaultive behavior of another worker. Mr. Mneur further testified under oath that he did not engage in ongoing aggressive behavior towards any other employee including supervisors and that he was not arrested or removed from the premises by police.

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.

For the reasons stated herein, the administrative law judge must conclude that the claimant's discharge took place under nondisqualifying conditions. The claimant's testimony is credible and is not inherently improbable.

DECISION:

The representative's decision dated February 4, 2008, reference 01, is hereby reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs