

**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**

**ANA G FUENTES
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**Appeal Number: 06A-UI-04827-RT
OC: 04/09/06 R: 01
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:

The claimant, Ana G. Fuentes, filed a timely appeal from an unemployment insurance decision dated May 2, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 22, 2006, with the claimant participating. The claimant was represented Jay Smith, Attorney at Law, who was in the law office with the attorney of record, Dennis McElwain. The claimant was assisted by an interpreter, Olga Ayala. Steven Joyce, Director of Human Resources, participated in the hearing for the employer, John Morrell & Company. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time laborer on the second shift ham line from January 6, 2003, until she was discharged on April 6, 2006. The claimant had also been previously employed by the employer. The claimant was discharged for participating, provoking and instigating a fight on the employer's premises. On April 4, 2006, the claimant was carrying a white barrel of ice and bumped into a co-worker, Jessica Zamorano. Words were exchanged between the two including insulting and provoking words. The claimant again walked by Ms. Zamorano and bumped her a second time with the barrel. Additional words were exchanged and a fight between the two ensued. The fight was broken up by Lydia Rodriguez. Four witnesses observed at least a portion of these incidents and were interviewed by the employer's witness, Steven Joyce, Director of Human Resources. His notes of the interviews are shown at Employer's Exhibit One. The claimant was the aggressor and the instigator. However, during the fight, the claimant was stabbed in the hand by a hook carried by Ms. Zamorano. At that time the claimant pushed Ms. Zamorano to the floor and then the fight was broken up by Ms. Rodriguez. Mr. Joyce interviewed both the claimant and Ms. Zamorano with the assistance of an interpreter. He also used an interpreter when necessary when interviewing the four witnesses. The claimant had received no relevant warnings.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on April 6, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Steven Joyce, Director of Human Resources, credibly testified that after the claimant bumped a co-worker, Jessica Zamorano, twice with a barrel of ice the two engaged in a fight. The exact details of the fight are uncertain. The statement of Ms. Zamorano as testified to by Mr. Joyce is at odds with the testimony of the claimant. However, four witnesses provided oral statements to Mr. Joyce, which he wrote down and which appear at Employer's Exhibit One. These statements are hearsay but the administrative law judge concludes that they are the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and is therefore admissible and credible. See Iowa Code section 17A.14. The common thread in the statements of Ms. Zamorano and the four witnesses is that the claimant was the instigator and started the fight. The claimant disagrees. The administrative law judge concludes that the claimant's testimony that she was not the instigator and did not provoke the fight is not credible. The claimant basically took no responsibility whatsoever for the fight but conceded that she at least on one occasion bumped Ms. Zamorano with the white barrel of ice. The claimant testified that she walked away but Ms. Zamorano grabbed her from the back. The claimant testified that Ms. Zamorano followed her, but the administrative law judge believes that if the claimant had walked quickly away and said nothing that no fight would have developed. Even the claimant conceded that she made some response to Ms. Zamorano about not getting angry because she might lose her baby. The claimant also was adamant that she never pushed Ms. Zamorano to the floor or that Ms. Zamorano was ever on the floor. This is repudiated clearly by the witnesses' statements. The administrative law judge also concludes that it takes two individuals to fight and if one walks away or does not participate it is hard to get into a fight. It is true that Ms. Fuentes was injured when she was stuck in the hand by a hook held by Ms. Zamorano, but this was as the result of the fight they had already engaged in. The administrative law judge in no way condones any use of weapons or injuries but must conclude here that the fight was instigated by the claimant or, at the very least, was participated in equally by the claimant. The employer has rules prohibiting such behavior. The administrative law judge is not unmindful of the serious problem of workplace violence faced by employers. Accordingly, the administrative law judge concludes that the claimant instigated a fight or at the very least participated in a fight which was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinced a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

DECISION:

The representative's decision of May 2, 2006, reference 01, is affirmed. The claimant, Ana G. Fuentes, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

cs/pjs