

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A WASHINGTON
Claimant

APPEAL NO. 13A-UI-01295-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 12/23/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 31, 2013, reference 03, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 1, 2013. Claimant participated. Participating on behalf of the claimant was Mr. Charles Pierce, Attorney, Legal Aid. The employer participated by Mr. James Cole, Site Manager; Joyce Moore, and Maria Mays.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Benjamin Washington was employed by the captioned temporary employment firm from March 10, 2010 until January 11, 2013 when he was discharged from employment. Mr. Washington was assigned at the time to the Rock Tenn Company as a supervisor. The claimant had been assigned to that client location since August 13, 2011.

On January 11, 2013, another worker under Mr. Washington's supervision was not responsive to the claimant's work directives and challenged Mr. Washington to a physical fight. Mr. Washington refused and the matter was brought to the attention of the site manager who called both Mr. Washington and the other employee into his office. As Mr. Washington exited the office, the other employee intentionally roughly bumped into Mr. Washington making a vile, racial remark to the claimant as he did so. The other employee was discharged at that time. Claimant was sent home for the remainder of the shift and told that the parties would discuss the matter the next day.

As Mr. Washington exited the building he was unexpectedly assaulted by the other worker and attempted to defend himself from repeated attacks. The altercation was witnessed on company security cameras. Police were called and Mr. Washington's probation officer was called as well.

No charges were brought against Mr. Washington for the incident and the claimant's probation officer found no fault in the claimant's conduct. Based upon the employer's belief that Mr. Washington had engaged in the physical altercation, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter, Mr. Washington participated personally and provided sworn testimony giving firsthand testimony about the incident that occurred on January 11, 2013 at the client location. In contrast, the evidence in support of the employer is hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony providing that the sworn, direct testimony is credible and not inherently improbable.

In the case at hand, Mr. Washington testified with credibility of the incidents leading up to the physical altercation outside the facility that night. Mr. Washington attempted to avoid a physical altercation by initially bringing the matter to supervisory personnel. Even after being called to the supervisor's office, the other employee continued to act in an aggressive manner intentionally bumping into Mr. Washington and issuing vile, racial epithets to the claimant in the presence of the supervisor. Mr. Washington testified that the other employee then unexpectedly attacked him as Mr. Washington left the premises and that Mr. Washington had no reasonable alternative but to attempt to defend himself from repeated blows. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. The administrative law judge also concludes that the evidence in the record establishes that the other worker's conduct and demeanor was of such a nature so as to make Mr. Washington's testimony about the other worker's conduct outside credible.

While the employer's decision to terminate Mr. Washington may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, willful misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 31, 2013, reference 03, is reversed. Claimant was discharged under non disqualifying conditions. unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs