

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R CARLIN

Claimant

APPEAL NO. 10A-UI-06538-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03/28/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 20, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 24, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. John Carrera participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker from November 26, 2007, to March 26, 2010. He was informed and understood that under the employer's work rules, fighting was prohibited.

On March 26, 2010, the claimant spoke to a coworker who was creating unsafe working conditions by deliberately working at too fast of a pace causing the cattle to pile up. The coworker ignored the claimant and laughed at him. When the claimant pushed the button to call a supervisor over, the coworker asked if he wanted to fight and then assaulted the claimant by hitting the claimant's face and head with his fists several times. The claimant hit the coworker once to defend himself. He had no opportunity to retreat until he hit the coworker. At that point he was able to get away from the coworker. The coworker, however, ended up throwing a piece of equipment at the claimant and injuring him.

The claimant and the coworker were both discharged for fighting on March 26, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The claimant did not instigate the fight, and I believe his testimony that he only hit the coworker in self-defense and was not able to retreat before hitting him. The claimant was not required to passively allow himself to be beaten after he was attacked without provocation. He used reasonable force in defending himself.

DECISION:

The unemployment insurance decision dated April 20, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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