

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY L SIME
Claimant

APPEAL NO. 12A-UI-03567-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BARTLETT INTERNATIONAL INC
BARTLETT GRAIN CO LP**
Employer

**OC: 03/04/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jerry L. Sime filed a timely appeal from an unemployment insurance decision dated April 4, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held April 24, 2012. Mr. Sime did not provide a telephone number at which he could be contacted. Corporate Counsel Simon Buckner, General Superintendent Joe Wollenhaupt and Vice President Bill Webster participated for the employer, Bartlett International, Inc. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Jerry L. Sime was a laborer for Bartlett International Inc. from February 25, 2008 until he was discharged March 6, 2012. The final incident leading to discharge occurred March 5, 2012 when Mr. Sime initiated a physical confrontation with coworker Richard Boll. General Superintendent Joe Wollenhaupt overheard the commotion and investigated. The two participants and two coworkers each submitted written statements. Mr. Wollenhaupt then forwarded the statements to Vice President Bill Webster. Mr. Webster reviewed the statements and noted that all except Mr. Sime's indicated that Mr. Sime was the instigator of the confrontation. He noted further that Mr. Sime had received four prior warnings for various infractions. He discharged Mr. Sime and gave lesser discipline to Mr. Boll for his part in the fracas.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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. See Iowa Code section 96.6.2. the evidence establishes that Mr. Sime was discharged for fighting, a violation of a known company rule. Especially when viewed on the context of prior discipline, the evidence establishes misconduct in connection with the employment. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 4, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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