

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KHALID N HASSAN**  
Claimant

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**APPEAL 18A-UI-07319-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/20/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 28, 2018, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for fighting on the job. The parties were properly notified about the hearing. A telephone hearing was held on July 25, 2018. Claimant participated and testified with the assistance of a Somali interpreter from CTS Language Link. Employer participated through Payroll/HR Assistant Laura Roney.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 21, 2015. Claimant last worked as a full-time sanitation laborer. Claimant was separated from employment on May 9, 2018, when he was discharged.

On May 7, 2018, claimant was involved in an altercation with another employee. Roney testified, based on what she observed on security footage, claimant and the employee exchanged words, claimant took off his hard hat, which fell to the ground, the two wrapped arms with each other, and ended up on the ground. Roney further testified it appeared claimant was on top of the other employee, hitting him. The two then got up and walked away. This version of events matched claimant's coworker's written statement. Additionally, the coworker reported he immediately went to a supervisor for assistance. The supervisor's statement supported the coworker coming to her for assistance and noted his nose was bleeding and eye appeared swollen. The supervisor then went and got claimant, along with security, and he was escorted out of the building with a directive to contact human resources later that day. The other employee was escorted out a few minutes later. Claimant was later discharged for violating the employer's policy regarding fighting while at work.

Claimant denied he was the aggressor in the altercation. According to claimant, he was holding a plastic barrel when his coworker came up and grabbed the hand holding the barrel. Claimant testified he tried to remove the worker's hand, but the employee hit him with the barrel. According to claimant the other employee then left but came back and was taunting him. Claimant testified the other employee then climbed on top of him and started attacking him. Claimant claimed he then went to the supervisor to report the attack, but was told she did not care, so he walked away. Claimant testified he believed Roney was not being honest about what she saw on the surveillance video because he had previously attempted to file complaints with Human Resources, but was turned away or had his complaints shredded. Roney testified she was not aware of any attempt claimant made to file complaints with her department. Roney also noted that in the statement claimant provided to the employer he alleged it was the coworker who walked away to get a supervisor.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

There is a disagreement between the parties as to who was the aggressor in the physical confrontation between claimant and his coworker on May 7. The employer's witness testimony was consistent throughout the hearing and questions were answered thoroughly and without hesitation. The claimant, on the other hand, was at times evasive or outright refused to answer questions regarding inconsistencies or asking for further explanation. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Employers generally have an interest in protecting the safety of all of its employees and invitees. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). Here, claimant not only failed to retreat from the situation, but the evidence shows he was most likely the aggressor. Claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the

best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

**DECISION:**

The June 28, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs