

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

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Appeal Number: 05A-UI-04616-DWT  
OC: 04/10/05 R: 01  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Francisco M. Angel (claimant) appealed a representative's May 2, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of John Morrell & Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2005. The claimant participated in the hearing with his union representative, Bill Buckles. Steve Joyce, the director of human resources, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on March 1, 1999. The claimant worked as a full-time laborer. During the course of his employment, the claimant was involved in a couple of incidents in which he lost control of his temper. Over two years ago, the employer suspended the claimant when he deliberately destroyed some property when he was very angry and upset with a co-worker. Another time, the claimant "blew a fuse" when he refused a supervisor's directive.

The claimant and V.J. worked together for a while with no problems. On April 13, 2005, problems occurred while the claimant was on a break. V.J. could not keep up with the work and work backed up to the extent there was a "mess." The supervisor had the claimant and V.J. come back early from a break to clean up the "mess" before other employees returned to the work area. The claimant was very upset that V.J. had allowed the work to back up to the extent she had. They were both cleaning up the "mess" and arguing with one another at the same time. Part of the clean up involved putting or throwing packaged meat into a barrel. The claimant picked up a package of meat that weighed 10 to 15 pounds. He tossed it toward a barrel. Instead of going into the barrel, the package hit V.J. in the back of the head. The claimant immediately told her that he was sorry. V.J. did not say anything. About four minutes later, she went to the supervisor and reported the incident because she was upset.

The employer investigated the incident. While the claimant admitted he was very upset with V.J., he denied he intentionally hit her with the meat. The claimant asserted this was an accident because he was trying to toss the meat into the barrel. Initially, the employer thought the claimant and V.J. were the only people in the room when this incident occurred. The employer discovered two other employees were in the room. One employee heard but did not see anything. The other employee saw the claimant put both arms up over his head before he threw the meat. This employee concluded the claimant intentionally tried to hit V.J. The claimant did not see anyone else in the room.

Based on the investigation and the claimant's history, the employer concluded he intentionally hit V.J. with the meat because he was very upset and angry with her. On April 18, 2005, the employer discharged the claimant for this incident.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.

Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant's testimony as to what happened on April 13, however, must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing. Even though the claimant had problems with his temper in the past, there is no evidence he ever intended to strike or physically harm a co-worker. On April 13, the claimant again became very upset, but the evidence indicates V.J. was also shouting and upset at the claimant. The facts establish the barrel that the meat had to be thrown into was close to V.J. Therefore, a preponderance of the credible evidence indicates the claimant did not intentionally try to harm V.J. by throwing a package of meat at her. The claimant's conduct when he became upset with V.J. is not condoned, but the facts do not establish the claimant committed work-connected misconduct on April 13. Therefore, as of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's May 2, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s