

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE N AYALA
Claimant

APPEAL NO: 07A-UI-04469-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 04/08/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jose N. Ayala (claimant) appealed a representative's April 25, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Schenker Logistics, Inc. (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, an in-person hearing was held on July 12, 2007, in Cedar Rapids. The claimant did not appear for the hearing. Richard Talcott, the employer's regional human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 September 26, 2005. The claimant worked as a full-time forklift operator.

During his employment, the employer talked to the claimant, counseled him, and gave him a written warning. On March 2, 2007, the employer gave the claimant a final written warning for repeatedly being involved in altercations with co-workers and management and for disrupting the workplace environment.

On March 2, 2007, the employer warned the claimant that he had to change his attitude and referred the claimant to the employee assistance program so he could work on his interpersonal relationship skills and anger management.

On April 5, employees reported that the claimant was involved in a verbal altercation with another employee. The employer learned the claimant had his hand raised and it appeared that the claimant was about to hit a co-worker. When the employer talked to the claimant about this incident, he denied that he had been about to hit another person.

On April 11, 2007, the employer discharged the claimant. The employer discharged him because of his repeated argumentative and disrespectful conduct at work toward his co-workers, including management.

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. 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).

Based on the evidence presented during the hearing, the employer discharged the claimant for repeated conduct that amounts to work-connected misconduct. As of April 8, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 25, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 8, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css