IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ABASS A HAMID
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 11A-UI-03952-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/23/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Abass A. Hamid (claimant) appealed a representative's March 23, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on May 18, 2011. The claimant participated in the hearing. Eloisa Baumgartner appeared on the employer's behalf and presented testimony from two other witnesses, Jamie Frye and Zak Ibrahim. Yasin Sarayrah served as interpreter. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 2009. He worked full time as a production employee on the "B" shift at the employer's Perry, Iowa, pork processing facility. His last day of work was January 21, 2011. The employer suspended him that day and discharged him on January 26, 2011. The reason asserted for the discharge was fighting with a coworker.

On January 21 the claimant was working on the line, speaking in Arabic to a nearby coworker about an upcoming soccer championship. He invited that nearby coworker to come over and watch the game on television. Another coworker who was working close to the first coworker overheard the conversation. He made an offensive response to the claimant, indicating that he would come over to watch the game also if he could "sleep" with the claimant's mother. The claimant was stunned, and asked that coworker whether he was addressing that comment to him, which that coworker confirmed. In the claimant's native culture, such a comment is extremely insulting. The claimant then stormed around the line to confront the coworker face-to-face. Before he actually got to the coworker, other employees intervened. The claimant admitted that he had been angry enough when he left his work area to approach the coworker that he might have struck the coworker if he gotten to him, but was not sure that is what he

would have done. He denied that he had gotten as far as even taking a swing at the coworker before the other employees intervened, and so did not know what he would have done if he had gotten to the coworker.

What was reported to the employer was that the claimant had at least taken a swing at the coworker. Because of the employer's policy against fighting, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is fighting on the line. Fighting at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). The claimant's only completed action that could have lead to fighting was leaving his work station to approach the coworker who had insulted the claimant. While he might have been considering physical violence against the coworker, even if other employees had not intervened the claimant might have stopped short of physically assaulting the coworker. Without an actual physical attack, particularly given the extreme nature of the insult given by the coworker, the administrative law judge cannot conclude that the claimant's simple approach to the coworker is tantamount to "fighting." Under the circumstances of this case, the claimant's departure from his work area to confront the coworker was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's

actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 23, 2011 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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