

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT G JACKSON**  
Claimant

**APPEAL NO. 08A-UI-02071-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IBP FOODS INC**  
Employer

**OC: 02-10-08 R: 01**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 29, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2008. The claimant did participate. The employer did participate through Hal Edrington, Human Resources Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an oven operator full time beginning August 4, 2005 through February 7, 2008 when he was discharged.

On February 2, 2008, the claimant shoved a coworker, Antonio Ferrer, after the two were involved in an argument. The claimant said he lost his temper when Mr. Ferrer was “in his face.” The event was witnessed by coworkers Chad Rice, Ernesto Arzaga, and Tyrone Foxworth who were each interviewed by Mr. Edrington. Each witness indicated that Mr. Ferrer and the claimant were arguing when Mr. Jackson shoved Mr. Ferrer. None of the witnesses indicated that Mr. Ferrer spit in the claimant’s face. Each of the witnesses identified the claimant as the one who initiated physical contact. The claimant had been trained on the employer’s rules of conduct which prohibit assaulting coworkers.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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.

Employer has an interest in protecting the safety of all of its employees. Claimant's use of physical aggression (shoving a coworker) 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. It is axiomatic under the law that mere words cannot justify assault. No matter what Mr. Ferrer was saying to the claimant, it does not justify the claimant shoving him. Benefits are denied.

**DECISION:**

The February 29, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css