

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE ALVAREZ
Claimant

APPEAL NO: 12A-UI-07276-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/20/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jose Alvarez (claimant) appealed an unemployment insurance decision dated June 13, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Tyson Fresh Meats, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2012. The claimant participated in the hearing. The employer participated through Kevin McGraw, warehouse manager, and Pat Parkhill, assistant manager. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time warehouse worker from September 7, 2010 through May 22, 2012, when he was discharged for gross misconduct. He was told he was fired for horseplay. On May 17, 2012, the claimant slapped at James Hennin's crotch. Mr. Hennin pinched the claimant in the groin "really, really, really hard." The claimant slapped Mr. Hennin in the face. He denies slapping Mr. Hennin but does admit he pushed Mr. Hennin to get him away. Nothing further happened at that time.

Approximately 90 minutes later, a second physical altercation occurred. It was reported that the claimant said something to his co-worker like, "You're my bitch." Mr. Hennin punched the claimant in the face and the claimant later had to seek medical treatment. The incident occurred outside of surveillance cameras. The claimant denies hitting his co-worker, but the employer's investigation resulted in conflicting reports. Some eyewitnesses reported the claimant struck back and others reported he did not. Both employees were suspended and subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 22, 2012 for fighting with his co-worker. He thinks he was wrongly terminated. The claimant admits hitting his co-worker in the groin and pushing him in the first altercation but denies participating in the second altercation. His testimony is credible and the administrative law judge does not believe the claimant struck his co-worker in the second altercation. However, that does not negate his actions in the first one. The claimant's assault on his co-worker shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated June 13, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw