

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 1, 2005.

Claimant was discharged on April 6, 2005 by employer because claimant engaged in a physical altercation. Claimant was in his office when a subordinate employee entered and started to hit claimant. There was no escape from the office. The office door was locked automatically. Claimant fought back and took the assailant to the ground. Claimant was then assisted by security to bring the situation under control. Claimant did not start the fight. Claimant properly defended himself, as there was no means of escape from the office. A third person was in the office and made no attempt to stop the progress of the altercation. The third person in the room made no attempt to help stop the altercation. Claimant had no warnings on his record. Employer's fighting policy calls for discharge on the first offense for both parties. The policy does not discriminate on who starts the fight.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant was discharged for 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning fighting. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not engage in a fight. Claimant defended himself in a room from which there was no escape. The door was locked and the other worker did nothing to assist claimant in stopping the altercation. Claimant has the right to defend himself. The policy does not discriminate on who started the fight but that does not change the fact that claimant has the right to protect his person. This is a case of self defense on the part of claimant. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

#### DECISION:

The decision of the representative dated May 6, 2005, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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