

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALVADOR GARCIA

Claimant

APPEAL NO: 10A-UI-07060-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 04-04-10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 5, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2010. The claimant participated in the hearing with Attorney Crystal Raiber. Maria Bozaan, Human Resources Manager, participated in the hearing on behalf of the employer with Attorney Tara Hall. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for West Liberty Foods from December 14, 1994 to April 6, 2010. At 8:57 a.m. on March 31, 2010, Team Member Julio reported that the claimant called him "gay," pushed him and held his work knife in his other hand when pushing him. At 10:30 a.m. Human Resources interviewed the claimant and he admitted calling Julio "gay," pushing him but said he was holding the knife, with the blade in his hand and the handle pointed outward toward the claimant. The claimant stated Julio threw meat at him and sprayed him with water. The employer suspended the claimant pending further investigation. The employer immediately began interviewing witnesses based on their proximity to the incident. One witness said she saw the claimant push Julio and point his knife, not the knife handle, at him and the day before saw the claimant throw a turkey head at Julio and hit him in his private parts. None of the witnesses saw Julio throw meat at or spray water on the claimant and one witness said she did not observe the incident but the claimant often made fun of other employees and said he was afraid of the claimant, and thought Julio was as well, because he was bigger and older. The employer decided to terminate the claimant's employment April 6, 2010, because pushing Julio was a major rule violation and the employer felt the claimant was uncooperative by being dishonest about pointing the knife blade at Julio in saying he held the knife by the blade and because he admitted calling Julio "gay."

REASONING AND CONCLUSIONS OF LAW:

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

While the claimant admitted calling Julio "gay," and pushing him, he denied pointing the knife blade at him. The claimant said he turned his work knife around so he was holding it by the blade and pointing the handle at Julio. The administrative law judge did not find that testimony credible as it seems extremely unlikely the claimant would take the time to switch the knife so he was gripping the knife by the blade instead of the handle and risk cutting himself when he was in an altercation with Julio. Additionally, the other witnesses contradicted the claimant's testimony and statements to the employer during the investigation that Julio threw meat at him and sprayed him with water, prompting the claimant to call him "gay," and push him. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The May 5, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs