

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAMES M PALMER
424 E ST
CEDAR FALLS IA 50613

BERTCH CABINET MFG INC
PO BOX 2280
WATERLOO IA 50704-2280

Appeal Number: 05A-UI-02007-JTT
OC: 01/23/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

James Palmer filed a timely appeal from the February 17, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 14, 2005. Mr. Palmer participated in the hearing. Mark Melcher, Benefits Coordinator, represented the employer. Mr. Melcher presented additional testimony through Chad Bedard, Department Leader. Exhibits One, Two and Three were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Palmer was employed by Bertch Cabinet Manufacturing as a full-time Ripping Receiving Apprentice from January 12, 2004 until January 24, 2005, when Department Leader Chad Bedard and Mitzy Tann, Human Resources Director, discharged him for misconduct.

The final incident that prompted the employer to discharge Mr. Palmer occurred on Friday, January 21, 2005. On that date, Mr. Palmer got into a physical altercation with another employee, Travis Moorman, on the production floor. Chad Bedard became aware of the situation when he walked out of the office and learned that the production line had stopped. When Mr. Bedard went to the area where the two men worked, he observed the two men holding onto each other so that they were in an interlocked fighting position. Mr. Bedard hollered at the men twice before they broke apart. Mr. Bedard directed one man to a conference room and the other to the office. As a result of speaking to the two men and interviewing the two other employees working in the area, Mr. Bedard determined that Mr. Palmer and Mr. Moorman were equally responsible for the altercation. Mr. Moorman suffered a bloody lip and swollen eye as a result of the altercation. Mr. Bedard sent both men home. Mr. Palmer was discharged the following Monday for the incident.

The employer has a written policy prohibiting fighting in the workplace. The policy is set forth in an employee handbook and indicates that an employee may be terminated upon a first offense violation of the rule. Mr. Palmer acknowledged receiving a copy of the handbook on January 8, 2004. Mr. Palmer had previously been counseled regarding the need to do a better job of controlling his level of frustration to avoid interpersonal conflict with other employees.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Palmer was discharged for misconduct in connection with his employment. It does.

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).

Since Mr. Palmer was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record as set forth in the Findings of Fact establishes that Mr. Palmer engaged in a physical altercation at the workplace on January 21, 2005. Regardless of whether Mr. Palmer struck the first blow or whether he initially reacted out of self-defense, Mr. Palmer failed to retreat from the physical altercation. Based on the information Mr. Bedard was able to gather about the incident, it appears that Mr. Palmer may in fact have been the first to strike a blow. In addition, the administrative law judge found Mr. Palmer's testimony regarding how he came to be face to face with Mr. Moorman in Mr. Moorman's work area not to be credible. Mr. Palmer testified he had merely gone over to Mr. Moorman's area to pick up a piece of scrap and was struck when he stood up. Mr. Palmer's explanation was implausible, given the context of an escalating dispute between himself and Mr. Moorman. Mr. Palmer was discharged for misconduct. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's decision dated February 17, 2005, reference 01, is affirmed. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

jt/tjc