

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAMADOU DIALLO

Claimant

APPEAL NO. 14A-UI-10956-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 09/21/14

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 17, 2014 (reference 02) which denied unemployment insurance benefits, finding that the claimant was discharged from work for violation of a known company rule. After due notice was provided, a telephone hearing was held on November 10, 2014. Claimant participated. The employer participated by Ms. Nikki Bruno, Human Resource Supervisor, and Alberto Escalante, Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mamadou Diallo was employed by West Liberty Foods from July 29, 2013 until September 24, 2014 when he was discharged from employment. Mr. Diallo was employed as a full-time production worker and was paid by the hour, his immediate supervisors were Alberto Escalante and Scco Somovio.

Mr. Diallo was discharged following a company investigation of an incident that had taken place on September 17, 2014. On that date, another employee from a different department, Marco, complained that Mr. Diallo had intimidated him at work by grabbing his arm and threatening him with a production knife. Based upon the serious nature of the employee's allegation, the company investigated and took statements from Mr. Diallo, Marco, and five other workers that were in the area.

During the incident, another female worker turned off an electric fan that was being used to cool workers in the area. Mr. Diallo turned the fan back on. A short time later, another worker from a different work area, Marco, came to Mr. Diallo's work area and turned the fan back off. Mr. Diallo in turn again turned the fan back on and when the other male worker attempted to again shut off the fan, Mr. Diallo grabbed his arm/hand to stop him. A verbal exchange then took place between Mr. Diallo and the other worker, during the exchange Mr. Diallo shook the production knife that he was using in the other worker's face stating "if you unplug the fan, you will know me."

When questioned about the matter Mr. Diallo admitting grabbing the other worker's arm but denied using a production knife to intimidate the other worker. Because the other worker had complained that Mr. Diallo had threatened him with the knife and Mr. Diallo had denied it, the company relied on the observations of five other workers who were present in the area to confirm whether or not Mr. Diallo had used his production knife in an intimidating way.

Of the five witnesses, three made statements confirming that Mr. Diallo had used his knife in an intimidating manner. The two other witnesses either did not see the incident or offered hearsay about what had taken place.

Company policy strictly prohibits employees from threatening or intimidating behavior. Employees who violate the policy are subject to discharge on the first infraction. Mr. Diallo had been warned in March 2014 for engaging in disruptive behavior towards another employee. After reviewing the statements of the parties and the witnesses to the incident, the employer concluded that the claimant had acted in an unnecessary and intimidating manner by grabbing the other worker's arm and using his production knife in an intimidating way. Mr. Diallo was, therefore, discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in discharge cases. 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 may not necessarily be 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. of Appeals 1992).

In the case at hand, the claimant was discharged when the preponderance of the evidence established that he had violated company policy by physically grabbing another employee and by using a production knife in an intimidating manner in an attempt to stop another employee from turning off a fan that was being used to cool the work area. The preponderance of the evidence establishes that Mr. Diallo went beyond reasonable limits not only when he grabbed the arm of the other employee but also when he made a generally threatening statement and shook his production knife in the direction of the other male worker. Mr. Diallo knew or should have known that touching another worker, making threatening statements, and using a production knife to emphasis the point that he was making to the other worker, was contrary to the company's strict policies that prohibit violence in the workplace and could result in his termination from employment.

While it is clear that Mr. Diallo was discharged because of the conduct initiated by another worker from a different department, it is unclear whether that worker was subject to disciplinary action as well for his conduct that did not appear to be work-related but intended to bait Mr. Diallo into taking action.

Because the employer has sustained its burden of proof in this matter, the administrative law judge concludes that the claimant was discharged under disqualifying conditions and is disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible. Mr. Diallo knew or should have known that taking matters into his own hands could jeopardize his employment and would be contrary to the company's rules. The claimant is therefore disqualified from the receipt of unemployment insurance benefits.

DECISION:

The representative's decision dated October 17, 2014 (reference 02) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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