

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RITA R SHACK**  
Claimant

**APPEAL NO. 11A-UI-05432-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 03/13/11**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 19, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 17, 2011. Claimant participated. Employer participated through Human Resources Manager Jim Hook.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a production worker from March 29, 2010 and was separated from employment on March 14, 2011. On March 11 coworkers reported that claimant and coworker Fallon Sproles were fighting in the women's locker room after Sproles pushed her door closed and said something "smart." Claimant threw a padlock at Sproles and hit her in the back of the leg. They started fighting and claimant bit her finger. She had a chance to retreat and have management handle the dispute but did not do so. Sproles was discharged as well.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. EAB*, 529 N.W.2d 640 (Iowa App. 1995).

Employer has an interest and duty in protecting the safety of all of its employees. Claimant opting for physical aggression rather than allowing human resources or management to assist in resolving the issue with her coworker was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

#### **DECISION:**

The April 19, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/kjw