

**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**

**TIMOTHY J KNUTSON  
606 W BROADWAY  
EAGLE GROVE IA 50533**

**AG PROCESSING INC  
c/o JOHNSON & ASSOCIATES  
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OMAHA NE 68106-0007**

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**Appeal Number: 04A-UI-12300-B  
OC: 10/17/04 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Knutson (claimant) appealed an unemployment insurance decision dated November 1, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Ag Processing, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Ft. Dodge, Iowa on December 15, 2004. The claimant participated in the hearing. The employer participated through Ernie Kiley, Soy Operations Manager, and Attorney Becky Knutson. Employer's Exhibits One through Four and Claimant's Exhibit A were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's recent term of employment went from March 11, 2004 through October 15, 2004. He worked as a full-time process/boiler operator and signed for receipt of the employer's policies on March 26, 2004. The claimant was discharged for assaulting his co-worker on October 8, 2004. This was a violation of company work rule three, which prohibits the physical assault on any employee, customer or the general public while on duty or while on company property. This policy was listed as one that could warrant immediate termination. The claimant notified his manager immediately following the assault. He was subsequently suspended pending the outcome of an investigation.

The claimant and his co-worker appeared to have an ongoing personality clash. The claimant acknowledged that when he asked Mr. Rohrback questions, Mr. Rohrback would often ignore him and wave him off without responding. Mr. Rohrback would also then run "out of the room in a huff" or yell first before he ran out of the room. On October 8, 2004 at approximately 7:30 p.m., Mr. Rohrback went to use the phone in the room where the claimant was located. Mr. Rohrback called a supervisor to tell him about a plant emergency. The claimant could not hear what was being said so he got up and stood a few feet in front of Mr. Rohrback. The claimant asked Mr. Rohrback what was going on and Mr. Rohrback ignored him. Eventually, Mr. Rohrback waived his arm as he turned away from the claimant. It was at that time that the claimant reported he simply reacted and smacked, jabbed, or hit Mr. Rohrback's arm. The claimant admitted what he did was improper and even offensive but denies that he "assaulted" Mr. Rohrback. The claimant was subsequently discharged on October 15, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for assaulting his co-worker on October 8, 2004. He admitted hitting his co-employee in the arm, even though he may have used a different word to describe the contact. Regardless of how the claimant personally views his conduct, his actions are sufficient to constitute an assault under the Iowa Criminal Code §708.1(1). His actions are also in clear violation of the employer's plant work rule number three. The claimant had notice a violation of this policy could result in immediate termination, as evidenced by his receipt of the work rules on March 26, 2004. His actions were not in self-defense and, in fact, he was the aggressor in this case. Employers have a duty to maintain a violence-free workplace for its employees. An employee who cannot control his or her emotions enough to refrain from physically assaulting a co-employee, is a serious liability to the employer. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

#### DECISION:

The unemployment insurance decision dated November 1, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/smc