

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ABDALLE N MOHAMUD**  
Claimant

**APPEAL 18A-UI-06370-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 05/13/18**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 31, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that the claimant was discharged and the employer failed to establish willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 26, 2018. The claimant, Abdalle N. Mohamud, participated. Somali/English interpreters Nadia (ID number 6403), Noor (ID number 9839), and Bishar (ID number 22717) assisted with the hearing. The employer, Agri Star Meat & Poultry, L.L.C., participated through Laura Roney, Payroll/HR Assistant. Employer's Exhibits 1 through 15 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a utility and cut-up department employee, from August 22, 2016, until May 10, 2018, when he was discharged. On May 7, 2018, claimant was involved in an altercation with a coworker. Claimant's coworker, a sanitation worker, came toward claimant looking for a fight. This employee jumped on claimant, sat on him, and hit him. Claimant tried to hold the employee's hands to stop him from hitting, and the employee hit claimant with his head. (Exhibits 10 and 11) Claimant denies he hit this employee during the altercation. Claimant called out for help during the incident, but there was no one nearby. After the altercation ended, claimant went looking for a supervisor. Claimant reported to the supervisor that the employee punched him in the face. (Exhibit 12) The employer conducted an investigation the following day, taking statements from both employees and reviewing video of the incident. Roney reviewed the video and it appeared that the other employee, not claimant, instigated the altercation. There were no firsthand witnesses to this altercation.

Roney determined, pursuant to the employer's policy, that both employees should be discharged because they were both involved in the altercation. Claimant had never been warned for anything similar in the past.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,920.00, since filing a claim with an effective date of May 13, 2018, for the eight weeks ending July 7, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification. Roney personally participated in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony credible. The administrative law judge believes claimant's firsthand testimony that he did not actively participate in the physical altercation. Rather, the administrative law judge believes that claimant was attacked by a coworker without provocation.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Here, the credible evidence shows that claimant was attacked by his coworker. Claimant took several defensive measures to try and get the coworker to stop attacking him. As soon as the attack ended, he reported the incident to a supervisor. The employer has not established that claimant was discharged from employment for any willful or deliberate misconduct. Benefits are allowed. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

#### **DECISION:**

The May 31, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs