

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEN COOK JR
Claimant

APPEAL NO. 11A-UI-13094-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 09-11-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 30, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 26, 2011. The claimant participated in the hearing. Ben Wise, hiring supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Cargill Meat Solutions from April 25, 2000 to September 13, 2011. On September 9, 2011, the claimant had an altercation with co-worker Eric Lopez. Mr. Lopez shoved him in the stairway and the claimant ended up in a catcher's crouch. The claimant stood up and swung at Mr. Lopez but missed him, although Mr. Lopez required treatment for a bloody nose, and several witnesses stated they saw the claimant hit Mr. Lopez. After the claimant swung at him, Mr. Lopez pushed him to the ground and pinned the claimant's hands with his hands and the claimant's chest with his knee. Mr. Lopez then got up and went to get a supervisor and the claimant returned to work for about one minute before a supervisor came and took him to the office. The claimant provided a written statement and he and Mr. Lopez were suspended pending further investigation before both were terminated for violating the employer's zero tolerance of violence in the workplace policy September 13, 2011. The claimant agrees there was not anything preventing him from walking away from the situation and finding a supervisor when he did not see one immediately during the confrontation with Mr. Lopez. There was tension between the claimant and Mr. Lopez for approximately the last seven years because the claimant was frustrated that Mr. Lopez' breaks were too long.

REASONING AND CONCLUSIONS OF LAW:

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

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.

While the evidence does not show the claimant started the altercation, neither did he walk away from it and find a supervisor. In Savage v. EAB, 529 N.W.2d 640 (Iowa App. 1995), the Iowa Court of Appeals established that in order to show self-defense a claimant must show (1) freedom from fault in bringing on the difficulty, (2) a necessity to fight back, and (3) attempt to retreat unless there is no means of escape or that peril would increase by so doing. In the present case, while Mr. Lopez may have started the confrontation, the claimant had seven years of frustration built up over the length of Mr. Lopez's breaks, and did take a swing at Mr. Lopez rather than backing away from the incident and getting a supervisor to intervene. While the claimant denies striking Mr. Lopez, he did have a bloody nose and was treated for the same, and several witnesses stated the claimant hit Mr. Lopez. Although the claimant's testimony was credible, he did engage in fighting behavior with Mr. Lopez. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The September 30, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw