

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L STRONG

Claimant

APPEAL NO. 06A-UI-11123-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICOLD LOGISTICS LLC

Employer

**OC: 10/15/06 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

James Strong filed a timely appeal from the November 8, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2006. Mr. Strong participated. Administrative Manager Jodi Cain represented the employer and presented additional testimony from Fork Lift Operator Joshua Jones.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. He was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Strong was employed by Americold Logistics as a full-time dock laborer from April 8, 2002 until October 18, 2006, when the management team discharged him for fighting in the workplace. The final incident that prompted the discharge occurred on October 17. Mr. Strong had entered an enclosed truck trailer that was in the process of being unloaded. Mr. Strong had taken with him the paperwork that needed to be reviewed and/or completed in connection with the particular load. Forklift operators, rather than dock laborers, were responsible for reviewing and/or completing such paperwork. Though Mr. Strong had been a forklift operator, he no longer held that position. After Mr. Strong had entered the trailer, forklift operator Joshua Jones came into the trailer looking for the paperwork. As the forklift operator, the paperwork was Mr. Jones' responsibility. Mr. Jones asked for the paperwork and Mr. Strong balked at the request. Mr. Jones insisted that the paperwork was his responsibility. Rather than handing Mr. Jones the paperwork, Mr. Strong threw the clipboard with the paperwork attached in Mr. Jones' direction and it landed on a pallet next to Mr. Jones. Mr. Jones told Mr. Strong that he should not have thrown the clipboard. Mr. Jones then turned to exit the trailer. Mr. Strong was angry and decided at that time that he wanted to exit the trailer. Mr. Strong approached Mr. Jones at the end of the trailer and shoved Mr. Jones aside. Mr. Jones was standing at the exit of the trailer, but had not in anyway been preventing Mr. Strong's exit at the time the physical aggression occurred. Mr. Jones reported the conduct to a supervisor, who directed both men to go to Administrative Manager Jodi Cain to discuss the situation. Ms. Cain

questioned each man together and separately and each told his side of the story to Ms. Cain. Mr. Strong then left for a doctor's appointment. The employer then considered prior similar incidents involving Mr. Strong and discharged him the next day.

The employer had previously reprimanded Mr. Strong for demonstrations of physical aggression. Those incidents involved Mr. Strong throwing or shoving items at or in the direction of coworkers. The prior disciplinary action had included a three-day suspension and a decision making leave.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Strong was discharged for misconduct in connection with the employment. It does.

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 of proof in this matter. 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 is not necessarily 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes that Mr. Strong escalated a verbal confrontation into a physical altercation on October 17, 2006. The evidence indicates that Mr. Strong's physical aggression towards Mr. Jones was not in self-defense. Instead, Mr. Strong's actions were part of a pattern of physically aggressive behavior, for which Mr. Strong had been repeatedly reprimanded.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Strong was discharged for misconduct. Accordingly, Mr. Strong is disqualified for benefits 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. The employer's account shall not be charged for benefits paid to Mr. Strong.

DECISION:

The Agency representative's November 8, 2006, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs