

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIMON A ATER
Claimant

APPEAL NO. 07A-UI-08701-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

**OC: 08/05/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 6, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 26, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Shelli Seibert participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a formulation grinder from December 7, 2002, to August 7, 2007. The claimant was informed and understood that under the employer's work rules, disorderly conduct or fighting on or off company property while on company business was grounds for immediate dismissal.

On August 6, 2007, another employee followed the claimant out when the claimant took a break. The employee was upset about the claimant being sent home early on the previous workday, which caused the employee to have extra work. The employee was taunting the claimant verbally. The claimant did not respond in kind but instead made it clear that he did not want to quarrel.

The employee physically assaulted the claimant by punching him and putting him in a headlock. The claimant defended himself physically to prevent being injured but did not start the fight and was not the aggressor in the altercation. After the parties were separated by a supervisor, the claimant out of frustration said some like, "Go ahead and kill me, I don't care." The claimant was angry and hurt and was expressing that he felt the employee was trying to kill him. The statement was not intended to provoke additional fighting by the parties.

On August 7, 2007, the employer discharged the claimant for his conduct on August 6, which the employer considered to be a violation of the employer's policy against fighting.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

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).

No willful and substantial misconduct has been proven in this case. The claimant testified credible about what happened and was the only person at the hearing with personal knowledge of what happened. The preponderance of the evidence establishes he defended himself physically to prevent being injured but did not start the fight and was not the aggressor in the altercation. He did not use any unreasonable force in defending himself. I do not believe that

the statement he made was intended to provoke but was a cry of distress at what had happened.

DECISION:

The unemployment insurance decision dated September 6, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css